FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. ....., ORIGINAL. AT LAW.

THE PRINCIPALITY OF MONACO,
Plaintiff,

v.

THE STATE OF MISSISSIPPI,
Defendant.

MOTION FOR LEAVE TO FILE DECLARATION AND DECLARATION.

DEAN EMERY,
ETHELBERT WARFIELD,
Attorneys for Plaintiff,
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Of Counsel.

Pandick Press, Inc., 22 Thomas St., New York, U. S. A.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

THE PRINCIPALITY OF MONACO, Plaintiff, *against* THE STATE OF MISSISSIPPI, Defendant.	No. Original.

COMES NOW The Principality of Monaco by Dean Emery and Ethelbert Warfield, its attorneys, and moves for leave to bring suit in this Court against The State of Mississippi upon the causes of action specified in the Declaration hereto attached, and further moves the Court upon the facts therein stated for leave to file the same and to prosecute the said action in this Honorable Court, and further moves the Court to issue summons therein.

DEAN EMERY AND ETHELBERT WARFIELD,
Attorneys for The Principality of Monaco,
Office and Post Office Address,
120 Broadway,
New York, N. Y.

FREDERIC R. KELLOGG,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

THE PRINCIPALITY OF MONACO, Plaintiff, *against* THE STATE OF MISSISSIPPI, Defendant.	No. Original.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

THE PRINCIPALITY OF MONACO, a foreign State, plaintiff in this action, by Dean Emery and Ethelbert Warfield, its attorneys duly authorized on its behalf, complains of The State of Mississippi, one of the United States, defendant in this action, which has been duly summoned to answer said plaintiff in an action of debt, and shows to this Honorable Court and alleges:

FIRST: Plaintiff, The Principality of Monaco, is a foreign State.

SECOND: Defendant, The State of Mississippi, is one of the United States.

THIRD: The Principality of Monaco, the party plaintiff herein, is the real party in interest in the causes of action constituting the subject matter of this Declaration.

I.

And thereupon, for a first count and cause of action, the said plaintiff demands of the said defendant the sum of $52,640, current money of the United States, which it owes to and detains from the said plaintiff.

FOURTH: For that, whereas, heretofore, to wit: on or about the 1st day of March, in the year of our Lord 1833, the defendant duly executed and sealed its certain eight writings obligatory, sealed with its Great Seal, in pursuance of a statute of the State of Mississippi, entitled: "An Act, to Establish a Planters' Bank in the State of Mississippi," approved February 10, 1830, being Chapter LXXIV of the Laws of the State of Mississippi, January Session 1830, as said statute is amended by a statute entitled "An Act Supplemental to an Act entitled 'An Act to establish a Planters Bank in the State of Mississippi'," approved December 16, 1830, being Chapter I of the Laws of the State of Mississippi, November Session, 1830, and in pursuance of a statute entitled "An Act further to Amend an Act entitled 'An Act to Establish a Planters' Bank in the State of Mississippi,' approved February 10th, 1830, and the acts Supplemental thereto," approved February 5th, 1833, being Chapter XXXV of the Laws of the State of Mississippi, January Session, 1833, copies of said statutes being hereto annexed and made a part hereof as though fully set forth herein, and marked Exhibits A, B and C respectively, known as State of Mississippi Planters' Bank Bonds, 1833, bearing the numbers E. No. 504 and E. No. 506 to E. No. 512, inclusive, of each of which, excepting the numbers thereon, the following in all things material is a true copy, to wit:

"United States of America,

State of Mississippi.

Printed at the Natchez Courier Office.

1000 Dollars E. No. 506

Mississippi State Bond—One Thousand Dollars

Know All Men by These Presents,

Thal the State of Mississippi, acknowledges to owe to J. Delafield, Cashier or Assigns, the sum of One Thousand Dollars, current money of the United States of America, which sum of money the said State promises to pay to the said John Delafield, Cash. his Heirs or Assigns, at the Phenix Bank / with the Interest / in the City of New York on the first day of March in the year of our Lord eighteen hundred and sixty-one, with Interest at the rate of Six per centum per Annum, payable half yearly, to wit: on the first day of September and first day of March in each and every year, until the payment of the said principal sum. One Million Five Hundred Thousand Dollars of The Stock of the State of Mississippi, in the "Planters' Bank of the State of Mississippi," (to be paid for with the proceeds of these Bonds) and the faith of the State are hereby pledged for the payment of the same.

Mississippi State Bond—One Thousand Dollars

In Testimony Whereof, The Governor of the State of Mississippi has signed, and the Auditor of Public Accounts countersigned, these presents, and caused the Great Seal of the State to be hereunto affixed, at Jackson, this first day of March in the year of our Lord One thousand eight hundred and thirty-three.

(Great seal of the State of Mississippi)

T. B. J. Hadley,
Auditor.

A. M. Scott,
Governor."

FIFTH: And for that, whereas, there are attached to each of said bonds forty-one (41) coupons of the following terms and tenor, and of each of which, excepting as to the date of maturity and numbers thereon, the following in all things material is a true copy, to wit:

Face of Coupon:

"Mississippi State Bond for $1000.

DIVIDEND WARRANT FOR MARCH 1, 1841—$30.
Pay at the Phenix Bank in New York

FELIX HUSTON. J. C. WILKINS
Commissioners."

E. No.
506

Back of Coupon:

Seal

SIXTH: And for that, whereas, no interest has been paid on said bonds since on or about September 1, 1840; and

SEVENTH: For that, whereas, the aforesaid bonds were duly issued, sold and delivered, in accordance with the provisions of the foregoing statutes; and

EIGHTH: For that, whereas, the aforesaid bonds were duly assigned by endorsement in blank on the back of each of said bonds, and of each of which endorsements excepting as to the certificate numbers thereon the following in all things material is a true copy, to wit:

"For Value Received, I, JOHN DELAFIELD, Cashier, do hereby assign and transfer the annexed Certificate E No. 506 to ..... or assigns

J. DELAFIELD,
Cashier of the Phenix Bank."

NINTH: And for that, whereas, after said delivery and assignment of said bonds, said bonds were given, transferred and manually delivered to plaintiff at its Legation in the City of Paris in the French Republic on or about the 27th day of September, 1933 together with a letter from the donor, Mary Euphemia Elliot, and from Dudley Churchill Marjoribanks Baron Tweedmouth and Giovanni del Drago, dated September 26, 1933, addressed to the plaintiff herein, a copy of which letter is hereto annexed and made a part hereof as though fully set forth herein and marked Exhibit D; and

TENTH: For that, whereas, prior to and on the said 27th day of September, 1933 it was and still is the law of the French Republic and also of The Principality of Monaco that tangible chattels and choses in action capable of ownership and transfer, including obligations embodied in written instruments such as the bonds sued on herein, can be validly and effectually given and transferred by manual delivery to and for the benefit of the donee and that such gift and manual delivery invest the donee with the absolute and unconditional ownership of the property thus given, transferred and delivered; and

ELEVENTH: For that, whereas, said gift and all of said bonds were duly accepted by plaintiff; and

TWELFTH: For that, whereas by virtue of said gift plaintiff became and now is the absolute and unconditional owner, holder and bearer of the said bonds and the obligations represented thereby and the overdue and unpaid coupons annexed thereto, all of which said bonds and unpaid

coupons are now here, ready to be shown unto the Court; and

THIRTEENTH: For that, whereas, by each of said bonds and writings obligatory, defendant promised, agreed, obligated and bound itself to pay to J. Delafield, Cashier, or assigns, the sum of $1,000. current money of the United States of America, on the 1st day of March, 1861, with interest at the rate of six per centum (6%) per annum, payable half yearly, to wit, on the first days of September and March in each and every year, from the date of said bond until the payment of the said principal sum, and defendant by said bonds acknowledged itself to be held and firmly bound and thereby became indebted unto the said plaintiff as follows, to wit:

In the aggregate sum of $8,000. principal, payable at the Phenix Bank in the City of New York on the 1st day of March, 1861 and in the further aggregate sum of $44,640. interest from September 1, 1840, to the last interest payment date, to wit: September 1, 1933, payable as aforesaid, making the total sum of $52,640., as witness said eight bonds; and

FOURTEENTH: For that, whereas, demand hath been duly made upon defendant for the payment of said sum of $52,640., yet defendant hath not paid the same or any part thereof, but so to do hath neglected and refused, and doth still neglect and refuse, to the plaintiff's damage in the aggregate sum of $52,640. and interest upon said sum of $8,000. at the rate of six per centum (6%) per annum from September 1, 1933, to the date of the payment of the said principal sum, and thereupon plaintiff brings this suit and prays judgment therefor.

II.

And thereupon for a second count and cause of action, said plaintiff demands of the said defendant the further sum of $13,160., current money of the United States, which it owes to and detains from said plaintiff.

FIFTEENTH: For that, whereas, heretofore, to wit, on or about the 1st day of March, in the year of our Lord 1833, the defendant duly executed and sealed its certain two writings obligatory, sealed with its Great Seal, in pursuance of the statute of the State of Mississippi, particularly set forth in paragraph FOURTH of this Declaration and a copy of which is annexed hereto and made a part hereof as though fully set forth herein, and marked Exhibit A, as said statute is amended by the statute also particularly set forth in Paragraph FOURTH of this Declaration and a copy of which is annexed hereto and made a part hereof as though fully set forth herein and marked Exhibit B and in pursuance of the statute also particularly set forth in paragraph FOURTH of this Declaration and a copy of which is annexed hereto and made a part hereof as though fully set forth herein and marked Exhibit C, known as State of Mississippi Planters' Bank Bonds, 1833, bearing the numbers F. No. 1008 and F. No. 1011, each of which is of the following terms and tenor and of each of which, excepting the numbers thereof, the following in all things material is a true copy, to wit:

"UNITED STATES OF AMERICA,
STATE OF MISSISSIPPI

Printed at the Natchez Courier Office.

1000 Dollars F. No. 1011.

MISSISSIPPI STATE BOND—ONE THOUSAND DOLLARS

KNOW ALL MEN BY THESE PRESENTS,

THAT THE STATE OF MISSISSIPPI, acknowledges to owe to J. Delafield, Cash. or Assigns, the sum of One Thousand Dollars, current money of the UNITED STATES OF AMERICA, which sum of money the said State promises to pay to the said John Delafield, Cash. his Heirs or Assigns, at the Phenix Bank / with interest / in the City of New York on the first day of MARCH in the year of our Lord eighteen hundred and sixty-six, with Interest at the rate of Six per centum, per annum, payable half yearly, to wit: on the first day of September and first day of March in each and every year, until the payment of the said principal sum. ONE MILLION FIVE HUNDRED THOUSAND DOLLARS of The Stock of the State of Mississippi, in the "PLANTERS' BANK OF THE STATE OF MISSISSIPPI," (to be paid for with the proceeds of these bonds), and the faith of the State are hereby pledged for the payment of the same.

IN TESTIMONY WHEREOF, The Governor of the State of Mississippi has signed, and the Auditor of Public Accounts countersigned, these presents, and caused the Great Seal of the State to be hereunto affixed, at JACKSON, this first day of MARCH in the year of our Lord One thousand eight hundred and thirty-three.

(GREAT SEAL OF THE STATE OF MISSISSIPPI)

A. M. SCOTT,
Governor."

T. B. J. HADLEY,
Auditor.

MISSISSIPPI STATE BOND—ONE THOUSAND DOLLARS

SIXTEENTH: And for that, whereas, there are attached to each of said bonds fifty-one (51) coupons of the following terms and tenor, and of each of which, excepting as to the date of maturity and numbers thereon, the following in all things material is a true copy, to wit:

Face of Coupon:

"Mississippi State Bond for $1000.

DIVIDEND WARRANT FOR MARCH 1, 1841—$30.

Pay at the Phenix Bank in New York

FELIX HUSTON. J. C. WILKINS
Commissioners."

F. No. 1011.

Back of Coupon:

Seal

SEVENTEENTH: And for that, whereas, no interest has been paid on said bonds since on or about September 1, 1840; and

EIGHTEENTH: For that, whereas, the aforesaid bonds were duly issued, sold and delivered, in accordance with the provisions of the foregoing statutes; and

NINETEENTH: For that, whereas, the aforesaid bonds were duly assigned by endorsement in blank on the back of each of said bonds, and of each of which endorsements excepting as to the certificate numbers thereon the following in all things material is a true copy, to wit:

"For Value Received, I, JOHN DELAFIELD, Cashier, do hereby assign and transfer the annexed Certifi-

cate F. No. 1011 to .....,
or assigns.

J. DELAFIELD,
Cashier of the Phenix Bank."

TWENTIETH: And for that, whereas, after said delivery
d assignment of said bonds, said bonds were given, trans-
rred and manually delivered to plaintiff at its Legation
the City of Paris in the French Republic on or about the
h day of September, 1933, together with a letter from
donor, Mary Euphemia Elliot, and from Dudley
urchill Marjoribanks Baron Tweedmouth and Giovanni
Drago, dated September 26, 1933, addressed to the
intiff herein, a copy of which letter is hereto annexed
d made a part hereof as though fully set forth herein
d marked Exhibit D; and

TWENTY-FIRST: For that, whereas, prior to and on the
d 27th day of September, 1933 it was and still is the
v of the French Republic and also of The Principality
Monaco that tangible chattels and choses in action
pable of ownership and transfer, including obligations
bodied in written instruments such as the bonds sued on
rein, can be validly and effectually given and transferred
manual delivery to and for the benefit of the donee and
t such gift and manual delivery invest the donee with
absolute and unconditional ownership of the property
s given, transferred and delivered; and

TWENTY-SECOND: For that, whereas, said gift and all of
d bonds were duly accepted by plaintiff; and

TWENTY-THIRD: For that, whereas, by virtue of said
t plaintiff became and now is the absolute and uncondi-

tional owner, holder and bearer of the said bonds and the obligations represented thereby and the overdue and unpaid coupons annexed thereto, all of which said bonds and unpaid coupons are now here, ready to be shown unto the Court; and

TWENTY-FOURTH: For that, whereas, by each of said bonds or writings obligatory, defendant promised, agreed, obligated and bound itself to pay to J. Delafield, Cashier, or assigns, the sum of $1,000. on the 1st day of March, 1866, with interest at the rate of six per centum (6%) per annum, payable half yearly, to wit, on the first days of September and March in each and every year, from the date of said bond until the payment of the said principal sum, and defendant by said bonds acknowledged itself to be held and firmly bound and thereby became indebted unto the said plaintiff as follows, to wit:

In the aggregate sum of $2,000. principal, payable at the Phenix Bank in the City of New York on the 1st day of March, 1866, and in the further aggregate sum of $11,160. interest from September 1, 1840, to the last interest payment date, to wit: September 1, 1933, payable as aforesaid, making the total sum of $13,160., as witness said two bonds; and

TWENTY-FIFTH: For that, whereas, demand hath been duly made upon defendant for the payment of said sum of $13,160, yet defendant hath not paid the same or any part thereof, but so to do hath neglected and refused, and doth still neglect and refuse, to the plaintiff's damage in the aggregate sum of $13,160. and interest upon said sum of $2,000. at the rate of six per centum (6%) per annum from

September 1, 1933, to the date of the payment of the said principal sum, and thereupon plaintiff brings this suit and prays judgment therefor.

III.

And thereupon, for a third count and cause of action the said plaintiff demands of the said defendant the further sum of $226,000, current money of the United States, which owes to and detains from the said plaintiff; and

TWENTY-SIXTH: For that, whereas, heretofore, to wit, on or about the 7th day of June, 1838, the defendant duly executed and sealed its certain twenty writings obligatory, sealed with its Great Seal, in pursuance of a statute of the State of Mississippi, entitled "An Act to Incorporate the Subscribers to the Mississippi Union Bank," enacted at the January Session, 1837, approved January 21, 1837, and duly re-enacted in accordance with Section 9 of Article VII of the Constitution of the State of Mississippi, then in force and effect, at the January Session 1838 and reapproved February 5, 1838, as amended by a statute, entitled "An Act Supplementary to an Act to Incorporate the Subscribers to the Mississippi Union Bank" enacted at the January Session, 1838, and approved February 15, 1838, a copy of said incorporating statute as reapproved February 5, 1838, being hereto annexed and made a part hereof as though fully set forth herein and marked Exhibit E, and a copy of said supplementary statute being hereto annexed and made a part hereof as though fully set forth herein and marked Exhibit F, known as State of Mississippi Union Bank Bonds, 1838, bearing numbers A No. 315 to A No. 328 inclusive, A No. 339, and A No. 592 to A No. 596 inclusive,

each of which is of the following terms and tenor and of each of which, excepting the numbers thereon, the following in all things material is a true copy, to wit:

"UNITED STATES OF AMERICA,
STATE OF MISSISSIPPI

No. 315		A
2000	Five Per Cent Loan.	2000
Mississippi		Five Per Cent.

KNOW ALL MEN BY THESE PRESENTS, that the State of Mississippi acknowledges to be indebted to the MISSISSIPPI UNION BANK, in the sum of TWO THOUSAND DOLLARS, which sum the said State of Mississippi promises to pay, in current money of the United States, to the order of the President, Directors & Company, on the fifth day of February 1850 with interest at the rate of Five per cent. per annum, payable half yearly at the place named in the endorsement hereto, viz: on the first days of May and November of every Year until the payment of the said principal sum.

IN TESTIMONY WHEREOF, the Governor of the State of Mississippi has signed, and the Treasurer of the State has countersigned, these Presents, and caused the Seal of the State to be affixed thereto, at Jackson, this 7 day of June in the Year of our Lord One thousand eight hundred and thirty-eight.

(GREAT SEAL OF THE STATE OF MISSISSIPPI)

JAMES PHILLIPS,
Treasurer.

A. G. McNUTT,
Governor.
State Loan"

TWENTY-SEVENTH: And for that, whereas, there are attached to each of said bonds nineteen (19) coupons of the following terms and tenor, and of each of which, excepting the date of maturity and numbers thereon, the following in all things material is a true copy, to wit:

Face of Coupon:

"Mississippi State Loan

Coupon No. 6, for Fifty Dollars, being interest due on Bond A. No. 315 and payable the first day of May, 1841.

$50.

SAML. GIVIN, Cashier."

Back of Coupon:

"Eleven Pounds five shillings sterling, payable at agency Bank United States, London.

11 £ 5s. stg."

TWENTY-EIGHTH: And for that, whereas, no interest has been paid on said bonds since on or about November 1, 1840; and

TWENTY-NINTH: For that, whereas, said bonds were duly issued and delivered in accordance with the provisions of the foregoing statutes; and

THIRTIETH: For that, whereas, the aforesaid bonds were sold at not less than their par value; and

THIRTY-FIRST: For that, whereas, the aforesaid bonds were duly assigned and transferred to Bearer by the endorsement of the President and the Cashier of the President, Directors & Company of said Mississippi Union Bank, said endorsement being on the back of each of said bonds, and of each of which endorsements the following in all things material is a true copy, to wit:

"£450 Stg.

THE PRESIDENT AND DIRECTORS

of the

MISSISSIPPI UNION BANK

Do hereby designate the Agency of the Bank of the United States in the City of London as the place of payment of the within Bond and interest, and hereby assign and transfer the same for value received to Bearer being equal to Four hundred and Fifty Pounds Sterling and guarantee the payment of the same at the place designated.

S. GIVEN, Cash'r. H. G. RUNNELS Pres't"

THIRTY-SECOND: And for that, whereas, after said delivery and assignment of said bonds and coupons said bonds were given, transferred and manually delivered to plaintiff at its Legation in the City of Paris, in the French Republic, on or about the 27th day of September, 1933, together with a letter from the donors, Dudley Churchill Marjoribanks Baron Tweedmouth and Giovanni del Drago, and from Mary Euphemia Elliot, dated September 26, 1933, addressed to the plaintiff herein, a copy of which letter is hereto annexed and made a part hereof as though fully set forth herein and marked Exhibit D; and

THIRTY-THIRD: For that, whereas, prior to and on the said 27th day of September, 1933, it was and still is the law of the French Republic and also of The Principality of Monaco that tangible chattels and choses in action capable of ownership and transfer, including obligations embodied in written instruments, such as the bonds sued on

ein, can be validly and effectually given and transferred manual delivery to and for the benefit of the donee and t such gift and manual delivery invest the donee with absolute and unconditional ownership of the property s given, transferred and delivered; and

THIRTY-FOURTH: For that, whereas, said gift and all of d bonds were duly accepted by plaintiff; and

THIRTY-FIFTH: For that, whereas, by virtue of said t plaintiff became and now is the absolute and uncondinal owner, holder and bearer of the said bonds and the igations represented thereby and the overdue and und coupons annexed thereto, all of which said bonds and paid coupons are now here, ready to be shown unto the urt; and

THIRTY-SIXTH: For that, whereas, by each of said bonds writings obligatory, defendant promised, agreed, oblited and bound itself to pay to the order of the Presit, Directors & Company of the Mississippi Union Bank sum of $2,000. on the 5th day of February, 1850, h interest at the rate of five per centum (5%) per num, payable half-yearly on the first days of May and vember of every year until the payment of the said prinal sum, and defendant by said bonds acknowledged itself be held and firmly bound and thereby became indebted said plaintiff as follows, to wit:

In the aggregate sum of $40,000. principal, payable at place named in the endorsement on said bonds on the day of February, 1850, and in the further aggregate n of $186,000. interest from November 1, 1840, to the last erest payment date, to wit: November 1, 1933, payable

as aforesaid, making a total sum of $226,000. as witness said twenty (20) bonds; and

THIRTY-SEVENTH: For that, whereas, demand hath been duly made upon the defendant for the payment of said sum of $226,000., yet the defendant hath not paid the same or any part thereof, but so to do hath neglected and refused, and doth still neglect and refuse, to the plaintiff's damage in the aggregate sum of $226,000. and interest upon said sum of $40,000. at the rate of five per centum (5%) per annum from November 1, 1933, to the date of the payment of the said principal sum, and thereupon plaintiff brings this suit and prays judgment therefor.

IV.

And thereupon, for a fourth count and cause of action, the said plaintiff demands of the said defendant the further sum of $282,500., current money of the United States, which it owes to and detains from the said plaintiff; and

THIRTY-EIGHTH: For that, whereas, heretofore, to wit, on or about the 6th day of June, 1838, the defendant duly executed and sealed its certain twenty-five writings obligatory, sealed with its Great Seal, in pursuance of the statute of the State of Mississippi particularly set forth in paragraph TWENTY-SIXTH of this Declaration and a copy of which is annexed hereto and made a part hereof as though fully set forth herein and marked Exhibit E, as said statute is amended by the statute particularly set forth in paragraph TWENTY-SIXTH of this Declaration and a copy of

which is annexed hereto and made a part hereof as though fully set forth herein and marked Exhibit F, known as State of Mississippi Union Bank Bonds, 1838, bearing numbers A No. 381 to A No. 383, inclusive, A No. 503 to A No. 519, inclusive, A No. 593, A No. 1105, A No. 1106, A No. 1108 and A No. 1124, each of which is of the following terms and tenor and of each of which, excepting the numbers thereon, the following in all things material is a true copy, to wit:

"UNITED STATES OF AMERICA,

No. 381	STATE OF MISSISSIPPI	A
2000	Five Per Cent. Loan.	2000
Mississippi		Five Per Cent.

KNOW ALL MEN BY THESE PRESENTS, that the State of Mississippi acknowledges to be indebted to the MISSISSIPPI UNION BANK, in the sum of TWO THOUSAND DOLLARS, which sum the said State of Mississippi promises to pay in current money of the United States, to the order of the President, Directors & Company, on the fifth day of February, 1858 with interest at the rate of Five per cent. per annum, payable half yearly at the place named in the endorsement hereto, viz: on the first days of May and November of every year until the payment of the said principal sum.

IN TESTIMONY WHEREOF, the Governor of the State of Mississippi has signed, and the Treasurer of the State has countersigned, these Presents, and caused the Seal of the State to be affixed thereto, at Jackson, this 6 day of June in the Year of our Lord One thousand eight hundred and thirty-eight.

(GREAT SEAL OF THE STATE OF MISSISSIPPI)

JAMES PHILLIPS,
Treasurer.

A. G. MCNUTT,
Governor.

State Loan"

THIRTY-NINTH: And for that, whereas, there are attached to each of said bonds thirty-five (35) coupons of the following terms and tenor, and of each of which, excepting the date of maturity and numbers thereon, the following in all things material is a true copy, to wit:

Face of Coupon:

"Mississippi State Loan

Coupon No. 6, for Fifty Dollars, being interest due on Bond A. No. 381 and payable the first day of May, 1841.

$50.

S. G., Cashier."

Back of Coupon:

"Eleven Pounds five shillings sterling, payable at agency Bank United States, London.

11 £ 5s. stg."

FORTIETH: And for that, whereas, no interest has been paid on said bonds since on or about November 1, 1840; and

FORTY-FIRST: For that, whereas, said bonds were duly issued and delivered in accordance with the provisions of the foregoing statutes; and

FORTY-SECOND: For that, whereas, the aforesaid bonds were duly sold at not less than their par value; and

FORTY-THIRD: For that, whereas, the aforesaid bonds were duly assigned and transferred to Bearer by the endorsement of the President and the Cashier of the Presi-

dent, Directors & Company of said Mississippi Union Bank, said endorsement being on the back of each of said bonds; and of each of which endorsements the following in all things material is a true copy, to wit:

"£ 450 Stg.

THE PRESIDENT AND DIRECTORS

of the

MISSISSIPPI UNION BANK

Do hereby designate the Agency of the Bank of the United States in the City of London as the place of payment of the within Bond and Interest, and hereby assign and transfer the same for value received to Bearer being equal to Four hundred and fifty Pounds Sterling and guarantee the payment of the same at the place designated.

S. GIVIN,
Cash'r

H. G. RUNNELS,
Pres't."

FORTY-FOURTH: And for that, whereas, after said delivery and assignment of said bonds, said bonds were given, transferred and manually delivered to plaintiff at its Legation in the City of Paris in the French Republic on or about the 27th day of September, 1933, together with a letter from the donor, Dudley Churchill Marjoribanks Baron Tweedmouth, and from Giovanni del Drago and Mary Euphemia Elliot, dated September 26, 1933, addressed to the plaintiff herein, a copy of which letter is hereto annexed and made a part hereof as though fully set forth herein and marked Exhibit D; and

FORTY-FIFTH: For that, whereas, prior to and on the said 27th day of September, 1933 it was and still is the law of the French Republic and also of The Principality of Monaco that tangible chattels and choses in action capable of ownership and transfer, including obligations embodied in written instruments such as the bonds sued on herein, can be validly and effectually given and transferred by manual delivery to and for the benefit of the donee and that such gift and manual delivery invest the donee with the absolute and unconditional ownership of the property thus given, transferred and delivered; and

FORTY-SIXTH: For that, whereas, said gifts and all of said bonds were duly accepted by plaintiff; and

FORTY-SEVENTH: For that, whereas, by virtue of said gift plaintiff became and now is the absolute and unconditional owner, holder and bearer of the said bonds and the obligations represented thereby and the overdue and unpaid coupons annexed thereto, all of which said bonds and unpaid coupons are now here, ready to be shown unto the Court; and

FORTY-EIGHTH: For that, whereas, by each of said bonds or writings obligatory, defendant promised, agreed, obligated and bound itself to pay to the order of the President, Directors & Company of the Mississippi Union Bank the sum of $2,000 on the 5th day of February, 1858, with interest at the rate of five per centum (5%) per annum, payable half-yearly on the first days of May and November of every year until the payment of the said principal sum, and defendant by said bonds acknowledged itself to be held and

firmly bound and thereby became indebted to said plaintiff as follows, to wit:

In the aggregate sum of $50,000. principal, payable at the place named in the endorsement on said bonds on the 5th day of February, 1858, and in the further aggregate sum of $232,500. interest from November 1, 1840, to the last interest payment date, to wit: November 1, 1933, payable as aforesaid, making a total sum of $282,500. as witness said twenty-five (25) bonds; and

FORTY-NINTH: For that, whereas, demand hath been duly made upon the defendant for the payment of said sum of $282,500., yet the defendant hath not paid the same or any part thereof, but so to do hath neglected and refused, and doth still neglect and refuse, to the plaintiff's damage in the aggregate sum of $282,500. and interest on said sum of $50,000. at the rate of five per centum (5%) per annum from November 1, 1933, to the date of the payment of the said principal sum, and thereupon plaintiff brings this suit and prays judgment therefor.

AND THEREUPON, plaintiff prays judgment against defendant in the aggregate sum of Five hundred seventy-four thousand three hundred and 00/100 Dollars ($574,300.00), to wit:

Upon the First Count in the sum of.....	$ 52,640.00
Upon the Second Count in the sum of.....	13,160.00
Upon the Third Count in the sum of.....	226,000.00
Upon the Fourth Count in the sum of.....	282,500.00
Total.....	$574,300.00

together with interest on the principal of said Planters' Bank Bonds at the rate of six per centum (6%) per annum

from the first day of September, 1933, until the payment of said principal sum, and with interest on the principal of said Union Bank Bonds at the rate of five per centum (5%) per annum from the first day of November, 1933, until the payment of said principal sum, besides the costs and disbursements of this action.

DEAN EMERY,
ETHELBERT WARFIELD,
Attorneys for The Principality of
Monaco, Plaintiff,
Office and Post Office Address,
120 Broadway,
New York, N. Y.

Exhibit A.

CHAP. LXXIV.

AN ACT, to establish a Planters' Bank in the State of Mississippi.

WHEREAS, the establishment of a Bank in the State of Mississippi for the purposes of general convenience and public revenue would, on the one hand by a judicious increase of the circulating medium, give impulse and vigor to agricultural labor, activity to commercial enterprize, and increased value to our lands, and on the other, by a creation of revenue, relieve the citizens of this State from an oppressive burden of taxes, and enable them to realize the blessings of a correct system of Internal Improvements—Therefore: Preamble.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Mississippi, in General Assembly convened,* That there shall be a Bank established at the city of Natchez, in the State of Mississippi, with a capital of three millions of dollars, to be divided into shares of one hundred dollars each; twenty thousand shares of which, amounting to two millions of dollars, shall be reserved for the State of Mississippi, and may be subscribed and paid for on the part of said State on the terms and according to the manner hereinafter prescribed, and ten thousand shares, amounting to one million of dollars, shall be subscribed and paid for by individual firms or bodies corporate: provided, this act shall not be so construed as to extend to any person or persons who are not citizens of the United States the privilege of becoming stockholders in said Bank. Bank established.

Sec. 2. *And be it further enacted,* That the faith of the State of Mississippi is hereby pledged

Stockholders to make good losses in proportion to amount of stock held by them.

to make good all losses which may accrue from a deficiency of the funds of said Bank, or by other means, in proportion to the amount of stock which the State shall possess therein, and that each and every stockholder shall, in his private and natural capacity, be held liable to each and every person who shall suffer damage or loss by the means aforesaid to make good said loss or damage in a ratio proportioned to the amount of stock which he, she or they shall hold in said Bank.

Subscriptions to be opened for one million of dollars.

Sec. 3. *And be it further enacted,* That on the first Monday in March next subscriptions for one million of dollars, towards constituting the capital of said Bank, shall be opened in the city of Natchez, under the superintendence of James C. Wilkins, Thomas Banard, William Ferriday, John Baynton, George Winchester, James Foster and Thomas G. Ellis, for the amount of two thousand shares; at the town of Vicksburg, under the superintendence of N. W. Ford, Thomas Warfield, Willis Vick, William R. Campbell, Edward Mitchell, Alexander McNeil and Anthony Durden, for the amount of two thousand shares; at the town of Port Gibson, under the superintendence of James Watson, sen'r., Thomas Cotton, Horace Carpenter, George Irish, Hardy W. Pope, William Briscoe, William R. McAlpin and David D. Downing, for the amount of fifteen hundred shares; at the town of Woodville, under the superintendence of George Poindexter, Peter Randolph, William Newell, William Johnson, Joseph A. Foster, Arthur Daniels, Tignal Jones Stewart and William L. Brandon, for the amount of one thousand two hundred and fifty shares; at the town of Rodney, in the county of Jefferson, under the superintendence of David Hunt, John Snod-

grass, John Ducker, Christopher Darr, G. T. Tullis and Alexander Montgomery, for the amount of fifteen hundred shares; at the town of Columbus, under the superintendence of William Dowsing, Daniel W. Wright, Edward Randolph, Samuel Ragsdale, Charles H. Abert and George Shæfer, for the amount of six hundred shares; at Liberty, in the county of Amite, under the superintendence of Charles Davis, Stephen H. Strong, William Lattimore, Thomas Batchelor and Gabriel Felder, for the amount of five hundred and fifty shares; at the town of Monticello, in the county of Lawrence, under the superintendence of Charles Lynch, T. W. Burge, Thomas Collins, Joseph Cooper and Arthur Fox, for the amount of six hundred shares, and a majority of said superintendents, at the aforesaid places respectively, shall be authorized to perform the duties of their appointment, and are hereby required to keep the subscriptions open for the term of fifty days, unless the aforesaid amount at the several places be sooner subscribed for, when the same shall be closed, and it shall not be lawful for any person, copartner of any firm or any body corporate, to subscribe for more than thirty shares on any one day during the first twenty-five days the subscription shall be open; and the amount of the shares so subscribed for, shall be paid for, by the several and respective subscribers, in gold, silver or the notes of the Bank of the State of Mississippi or any of its branches, one fourth at the time of subscribing, one fourth in sixty days thereafter, and the remaining two fourths six months after the said Bank shall go into operation.

Superintendents to make estimate of amount of shares subscribed for.

Sec. 4. *And be it further enacted,* That immediately after the superintendents at Vicksburg, Port Gibson, Woodville, Columbus, Monticello, Liberty and Rodney, shall have respectively closed they shall transmit and deliver to the superintendents appointed at the city of Natchez, a list of the several subscribers at such places respectively, and of the share or shares to each and every subscriber belonging, and on the receipt of the lists of the said several subscriptions the superintendents at the city of Natchez, or a majority, shall immediately thereafter convene and proceed to make an estimate of the amount of the shares which shall have been subscribed for, and in case the aggregate amount of the subscriptions made during the period aforesaid, at the said several places, shall not equal the sum of one million of dollars, the subscriptions to complete said sum of one million shall be and remain open at the said city of Natchez, under the direction of the superintendents appointed at said place, under the conditions and prescriptions aforesaid.

To make deposite in the Bank of the State of Mississippi.

Sec. 5. *And be it further enacted,* That the superintendents respectively shall place the gold and silver coin and notes of the Bank of the State of Mississippi, which may by them be received from the subscribers to the stock of said Bank, on account of said subscriptions, in the Bank of the State of Mississippi, or some of its branches, as a special deposite—so that the same may be specifically delivered as the same by them shall be received, to the President, Directors and Company of the Planters' Bank of the State of Mississippi, or to their order, as soon as the said Bank shall be organized, and the superintendents at Vicksburg, Port Gibson, Woodville, Columbus, Monti-

cello, Liberty, and Rodney, respectively, immediately after each payment shall become due by the subscribers, according to the provisions of the fourth section of this act, notify the superintendents at Natchez, of the amount of gold and silver coin and Bank Notes actually received by them on account of such payment, and the said superintendents of the subscriptions to the capital of said Bank shall receive a reasonable compensation for their services, to be allowed by the President and Directors thereof, out of the funds of said Bank.

Sec. 6. *And be it further enacted,* That the subscribers to the said Bank, their successors and assigns, shall be, and they are hereby created a body corporate and politic, by the name and style of "The President, Directors and Company of the Planters' Bank of the State of Mississippi," and shall so continue until the first day of March, in the year one thousand eight hundred and fifty-five, and by that name shall be capable and able in law to have, possess, receive, retain and enjoy to themselves and their successors lands, rents, tenements, hereditaments, goods, chattels and effects, of what kind soever, nature and quality, not exceeding, in the whole, six millions of dollars, including the capital stock of said Bank, and the same to grant, demise, alien or dispose of, for the good of said Bank; to sue and be sued, implead and be impleaded, defend and be defended, answer and be answered unto, in any suit, action, matter or thing in any Court of Law or Equity, or any other place whatsoever: and also to have and use a common seal, and the same to break, alter or amend at pleasure, and also to establish, ordain and put in execution all such by-laws, ordinances,

Name and style of the incorporation.

May hold real and personal property.

rules and regulations, for the good government of the same, as they may deem most expedient, not contrary to the laws or constitution of this State, or the United States, and generally to do and perform all and singular such matters and things as to them may appear necessary, or which to them may appertain to do, as incident to bodies corporate, subject, further, to the restrictions hereinafter prescribed.

Governor to to subscribe for ten thousand shares on behalf of the State.

Sec. 7. *And be it further enacted,* That at the opening of subscriptions to the capital stock of said Bank, the Governor of the State, on behalf of the same, shall subscribe or cause to be subscribed for, ten thousand shares, amounting to one million of dollars, to be paid in the manner following, to wit: Immediately after the election and appointment of the first Directors, as hereinafter specified, the Auditor of Public Accounts shall deliver to the President, Directors and Company of the said Bank, bonds, in such sums as the said Directors shall appoint, payable by the State to the order of the President, Directors and Company of the Planters' Bank of the State of Mississippi, which bonds shall bear an interest of five per centum per annum, payable half yearly, and shall be delivered at their full value for stock; —these bonds shall be at the following terms— that is to say, bonds for the sum of two hundred and fifty thousand dolars, to be payable at the end of ten years from the date thereof; bonds for the further sum of two hundred and fifty thousand dollars, to be due and payable at the end of fifteen years from the date thereof; bonds for the further sum of two hundred and fifty thousand dollars, to be due and payable at the end of twenty years from the date thereof; and bonds

for the further sum of two hundred and fifty thousand dollars at the end of twenty-five years from the date thereof: which bonds shall be in the form following, to wit: "Know all men by these presents, that the State of Mississippi acknowledges to owe to the President, Directors and Company of the Planters' Bank of the State of Mississippi the sum of
dollars, current money of the United States of America; which sum of money the said State promises to pay to the said President, Directors and Company, their successors and assigns, on the day of , with interest, at the rate of five per centum per annum, payable half yearly, to wit: On the
day of , and the
day of , in each and every year, until the payment of the said principal sum.—In testimony whereof, the Governor of the State of Mississippi has signed these presents, and caused the great seal of the State to be hereunto affixed, at , this day of ,
in the year of our Lord one thousand eight hundred and thirty

Form of bonds.

————, *Governor*, (L. S.)

Which said bonds shall be under the seal of the State, signed by the Governor, and countersigned by the Auditor of Public Accounts, and may be assigned by the endorsement of the President and Cashier of said Bank on the back thereof, either to the order of any person, or to the bearer; and the endorsement thereof shall appoint the place where the said half yearly interest shall be paid: all expenses attending the issuing of such bonds to be defrayed by the Bank with the funds thereof.

Faith of State pledged for payment of bonds.

Sec. 8. *And be it further enacted,* That the faith of the State of Mississippi be, and the same is hereby pledged for the payment of the principal and interest of the said bonds, upon the falling due thereof, and also the stock of the State in said Bank shall be, and the same is hereby pledged for the payment of the same: Provided that the interest to be paid by the State upon said bonds shall only accrue from the day on which the same shall be negotiated.

Bonds to be sold for specie.

Sec. 9. *And be it further enacted,* That it shall be the duty of said Bank to sell for specie, the bonds to be subscribed by the State, as hereinafter specified for the account of said Bank, and to provide for the payment of the half yearly interest thereof at such place or places as the President and Directors may deem most expedient: Provided that any loss on exchange, expense, discount or charges consequent upon the payment of said interest, shall be defrayed by the funds of the Bank, and provided, also, that any profit in exchange, or otherwise, which may accrue from the payment of said interest in any other place than Natchez, shall be for the benefit of said Bank.

President and Directors to deduct such proportion as will pay semi-annual interest.

Sec. 10. *And be it further enacted,* That the President and Directors of the said Bank shall deduct from the semi-annual dividends to be declared as hereinafter to be specified, such proportion of the accruing dividends upon the stock subscribed for the State, as is hereinbefore specified and directed, as shall be sufficient to pay the semi-annual interest which may have become due upon the aforesaid bonds of the State, and that the surplus of such dividends, if any there be, shall constitute a sinking fund, under the management of the Auditor and the President and Cashier

Surplus to constitute a sinking fund.

of said Bank, for the redemption of said bonds, and that until the full payment and extinguishment of the bonds which shall first become due, amounting to two hundred and fifty thousand dollars, no part of such surplus shall be applied to any other purpose than the extinguishment of the principal and interest of said bonds, and provided that after the payment and extinguishment of said bonds which shall first become due, and the interest which shall have accrued thereon, amounting, as aforesaid, to the sum of two hundred and fifty thousand dollars, that it shall be lawful for the State to apply such surplus to defraying the necessary and contingent expenses of the government, and provided, also, that it shall be lawful for the State, after the payment of interest, and extinguishment of the principal of the said bonds, as the same shall become due and payable, to apply such surplus as shall be found remaining upon an account of such dividends, to the current and necessary expenses of this State.

If dividend be insufficient to pay the interest, &c., Bank shall supply deficiency.

Sec. 11. *And be it further enacted,* That if the dividend arising from the stock subscribed for by the State, as is herein specified, shall be insufficient to meet the interest accruing on the said bonds, and the payment and extinguishment thereof when the same shall become due, the said Bank shall supply such deficiency, and charge the same to the account of the State of Mississippi, and for the payment thereof, the faith of the State is hereby pledged.

Governor and Senate to appoint seven Directors.

Sec. 12. *And be it further enacted,* That there shall be appointed by the Governor, by and with the advice and consent of the Senate, seven Directors of said Bank, who shall remain in office, and

discharge the duties of Directors, from the first day of March then next ensuing, for the term of one year, or until other Directors shall be elected; and immediately after the result of said election shall have been made known, in each and every year, the stockholders shall convene at the Banking House of the principal Bank, and proceed to the election of six Directors on the part of said stock-holders, in such manner as shall be established by them: provided that no stock-holder shall be entitled to more votes than he shall possess shares, and provided, also, that any stock-holder shall be entitled to vote by proxy. And the Directors elected by the stock-holders, as aforesaid, shall remain in office for the term of one year from the time of their appointment, and shall, together with the Directors appointed by the Governor, by and with the advice and consent of the Senate, have the management and control of the affairs of said corporation.—And it shall be lawful for the said Directors to allow the President of said Bank a suitable compensation for his services as such until the same shall be fixed and appointed by law—and provided that no individual shall be capable of holding a seat as a Director without possessing, in his own right, at least ten shares of the capital stock of said Bank.

Stockholders to elect six Directors.

Sec. 13. *And be it further enacted,* That the Governor of the state of Mississippi shall, and he is hereby authorized and required to sell, at the current price of the same, all the stock which the state now owns in the bank of the state of Mississippi, except fifty shares, and to apply the proceeds thereof, as far as the same will go, to the payment of the subscriptions for shares which he is hereby required to make of the remaining ten

Governor to sell all the stock the State owns in the Bank of the State of Mississippi.

thousand shares reserved to the State in this Bank, and the said Bank is required to distinguish between the shares paid for by the funds properly belonging to the State and those which shall be subscribed for on account of the Literary Fund, or on account of any other specified fund.

Three per cent fund to constitute part of capital stock.

Sec. 14. *And be it further enacted,* That all sums of money which shall, after the passage of this act remain, in the Treasury of the State of Mississippi, on account of the three per cent. fund, or which shall accrue therefrom, shall become a part of the capital stock of the State of Mississippi in said Bank, and all dividends arising therefrom shall be and remain a fund for the execution of the objects originally intended in the creation of said fund, unless the same shall be otherwise disposed of by law.

All moneys on account of fines, escheats, &c., to become capital of Bank.

Sec. 15. *And be it further enacted,* That all sums of money which shall be received into the Treasury of the State of Mississippi, not otherwise appropriated, on account of billiard table licenses, escheated property, fines and forfeitures, and all sums which shall be remaining on the accounts of the Treasurer on the first day of July in each and every year, after deducting a sum sufficient to meet the current expenses of the State for the ensuing part of the year, shall become capital in said Bank, and the Governor of the State, for the time being, is hereby required to subscribe, on the part of the State, for any of the said shares reserved to the State and to apply the aforesaid sums of money in payment of the same.

Power of Directors.

Sec. 16. *And be it further enacted,* That the Directors, for the time being, shall have the power to appoint and remove such officers, clerks and servants under them as shall be necessary for conducting the business of said corporation, and shall allow them such compensation as shall be reasonable and just for their services, and shall be capable of exercising such other powers and authority for the good government and order of said corporation, as shall be prescribed by the laws, regulations and ordinances of the same.

Further duties of President and Directors.

Sec. 17. *And be it further enacted,* That the President and Directors aforesaid shall receive money on deposite and pay away the same free of expense, discount bills of exchange and notes, with two or more good and sufficient names thereon, or secured by a deposite of Bank or other public stock, and shall, also, have power to make loans to citizens of this State in the nature of discount on real property, secured by mortgage and power of attorney to confess judgment on default of payment: provided, the sum so loaned shall never exceed one third part of the real unincumbered value of the property so mortgaged, and that no loan be made upon such security for a longer period than one year, nor shall the said Bank demand or receive upon any loan made as aforesaid, a greater interest than at the rate of seven per centum per annum, which shall always be paid in advance, and the said Bank shall always have the power to renew the loans made as aforesaid, upon the payment of one fourth of the principal due and the regular and prompt payment of the interest, and provided further, that no individual be permitted to borrow on his own account,

on the security of real property, a greater sum than four thousand dollars.

Sec. 18. *And be it further enacted,* That no stockholder who is not a resident of this State shall be eligible as a Director, nor shall any Director be entitled to any emoluments, nor shall he be permitted, directly or indirectly, to have discounts amounting to more than six thousand dollars, at any one time.

Non-resident stockholders ineligible as Directors.

Sec. 19. *And be it further enacted,* That not less than seven Directors shall constitute a board for the transaction of business, of whom the President shall always be one, except in case of sickness and necessary absence, in which case his absence shall be supplied by any Director whom he shall, by writing, appoint for that purpose, and in the event of the death of the President, of removal from office or of his failing to make such appointment, the Directors, for the time being, shall have power to appoint a President pro tempore, and the President and Directors and all other officers of said Bank, before entering upon the duties of their respective offices, shall take the following oath, to wit: I, A. B. do solemnly swear that I will faithfully discharge the trust reposed in me as of the Planters' Bank of the State of Mississippi.

Seven Directors to constitute a Board to do business.

Sec. 20. *And be it further enacted,* That the President and Directors shall have power to issue notes, signed by the President and countersigned by the Cashier, not under the denomination of five dollars, on behalf of said corporation, with such devices as they may deem most expedient and safe.

Empowered to issue notes.

President and Cashier to give security.

Sec. 21. *And be it further enacted,* That every President and Cashier, before he enters upon the duties of his office, shall give bond, with three or more good and sufficient securities, to be approved of by the Directors, in a sum not less than fifty thousand dollars, conditioned for the faithful performance of his duties as such, and all other inferior officers shall, in like manner and upon the same condition, give bond in a sum not less than fifteen thousand dollars.

Amount of notes emitted limited.

Sec. 22. *And be it further enacted,* That the amount of notes emitted by said corporation shall not, at any time, exceed three times the amount of the stock actually paid in, including all moneys in deposite in said Bank, and it shall not be lawful for said Bank to discount any note or notes which shall not be made payable and negotiable at the said Bank or some one of its offices of discount and deposite, nor shall it be lawful for said Bank to demand or receive a higher rate of interest on any note made payable at said Bank, than seven per cent. per annum.

One half of capital to be loaned on mortgage.

Sec. 23. *And be it further enacted,* That an amount not exceeding one half of the capital actually paid in, may be appropriated to the sole purpose of being loaned upon notes or bonds, secured by mortgages on immovable property: provided, that no mortgage shall be taken upon lands not in a state of improvement, and the value of the property so mortgaged shall be ascertained to the satisfaction of the President and Directors in the following manner, to wit: Any person, or persons, who shall apply for loans to be secured by mortgage as aforesaid, shall present a just and true account of the real estate proposed to be

mortgaged and the titles by which the same may be holden, which said property shall be valued by commissioners, who shall be appointed as hereinafter directed.

Five commissioners to be appointed in each Senatorial district.

Sec. 24. *And be it further enacted,* That the President and Directors shall have power to appoint five commissioners in each Senatorial district, to value and appraise the lands which shall be offered in mortgage to the Bank, and every valuation of lands in each Senatorial district, shall be certified by at least three of said commissioners, and the President and Directors shall have power to fill up all vacancies or to remove any such commissioner at pleasure, and each and every commissioner shall be entitled to one dollar per day for every day which he shall be employed as a commissioner, to be paid by the party applying for the loan.

Money loaned on mortgage to be apportioned among the districts.

Sec. 25. *And be it further enacted,* That the sums of money loaned out on mortgage of real property shall be apportioned among the several Senatorial districts throughout the State, and whenever the sum allotted to any particular district cannot be loaned on good terms to the inhabitants thereof in a reasonable time, it shall then be loaned to the inhabitants of any part of the State who shall apply for the same.

Form of mortgage.

Sec. 26. *And be it further enacted,* That the mortgage shall be taken in form following, to wit: I, A. B. do assign over to the President, Directors and Company of the Planters' Bank of the State of Mississippi, my (here describe particularly the estate,) which estate I by these presents declare to be in mortgage for the repayment of the sum of with interest at

the rate of seven per centum per annum, from the date hereof, and I do hereby agree that the same may be exposed to sale, according to an act entitled an act to establish a Planters' Bank of the State of Mississippi, if I do not repay the interest and principal at the several and respective times in which they shall be lawfully due and payable; witness my hand and seal this day of in the year one thousand eight hundred and which mortgage shall be accompanied by a bond for the sum, and shall be binding and valid to all intents and purposes, and all mortgages so taken and remaining in possession of the said Bank shall be deemed as recorded and shall have priority of all bonds or deeds not previously recorded in the proper office.

Principal Bank may be removed to Seat of Government.

Bank to be established at Vicksburg.

Sec. 27. *And be it further enacted,* That the principal Bank established at the city of Natchez may be removed to the Seat of Government whenever the same shall become permanently fixed, and that the President and Directors of the said Bank shall, after the organization of the same, establish a Bank at the town of Vicksburg for the purposes of discount and deposite upon real security, under the rules, regulations and restrictions hereinbefore established, and to appoint the Directors and officers of said branch and to fix their salaries and prescribe their duties, and shall allot them a portion of the active capital of said Bank not less than five hundred thousand dollars, and it shall, also, be the duty of the said President and Directors to establish in like manner and under the same rules and regulations, a branch at the town of Rodney, in the County of Jefferson, so soon as the said Bank shall be organized, and to allot to said branch a portion of their capital, not less

than two hundred and fifty thousand dollars, which said amount may at any time be increased at the discretion of the said President and Directors, and said amounts at any time may be increased by the said Bank at Natchez or by a resolution of the Legislature directing the same, and it shall be the duty of the President and Directors of the said principal Bank to establish a branch or branches at any point or points in the State which they may deem expedient, and to allot them such portion of the capital of said Bank as can be successfully employed thereat.

Legislature to be furnished with statement of transactions of Bank.

Sec. 28. *And be it further enacted,* That the Legislature of this State shall be furnished with a general statement of the transactions of the Bank as often as they may require the same, which shall be signed by the Cashier, and countersigned by the President, and also be the duty of the Auditor to inspect such general account on the books of the Bank when he shall deem it necessary; and it is hereby declared to be his duty faithfully to report every violation of the fundamental rules of this corporation to the Legislature: provided that this shall not be so construed as to give a right of inspecting the private account of any individual or individuals, or any body corporate with the Bank.

Moneys to be deposited in Bank.

Sec. 29. *And be it further enacted.* That all bills or notes of said Bank originally made payable, or which shall become payable on demand, shall be received in all payments to the State, and all unexpended money in the Treasury of this State, and all the money hereafter received by the State on account of taxes, and all other moneys collected for the State by the officers thereof, shall be deposited in said Bank, to aid and facilitate the

operations thereof—subject, nevertheless, to all drafts on the part of the State, authorized by legal appropriations.

Semi-annual dividends to be declared.

Sec. 30. *And be it further enacted,* That semi-annual dividends shall be declared of so much of the profits of said Bank as shall be deemed advisable by the Directors thereof.

In what cases mortgaged premises to be sold.

Sec. 31. *And be it further enacted,* That in all cases where the interest, or interest and principal of any loans hereafter to be made by said Bank, in pursuance of this act, shall become due and in arrear, the Directors of said Bank shall be, and they are hereby authorized and empowered to advertise the mortgaged premises, for four weeks, in one or more of the newspapers of Natchez, and in the county where the mortgaged premises be, if any newspaper shall be there published: otherwise, by notice posted up at the Court House door, for the same period; and on the first Monday of December, in each and every year, shall cause the same to be exposed to sale by the Sheriff of the county in which said premises shall lie, at the Court-House thereof; and the President and Directors are hereby fully authorized to make conveyances for the same to the purchasers thereof, or to buy the same in, if they shall think proper, for the benefit of the Bank.—And in all cases where powers of attorney shall be given, to confess judgment in favor of the President, Directors and Company of said Bank, for any sums due said Bank for any loan or discount, which shall be made pursuant to this act, and the same become due and be in arrear, it shall be lawful for the President and Directors to enter up judgment upon such power of Attorney in the

Circuit Court of the county in which such party shall live, and execution shall issue thereon, in the name of the said President, Directors and Company for the whole amount of the debt which may be due said Bank.

Capital stock exempt from taxation.

Sec. 32. *And be it further enacted,* That no tax of any kind, whatever, shall be levied or collected from the capital stock of said Bank; and further, the President and Directors are hereby declared to be capable, and to have full power to accept of any amendment or alteration of said charter which shall be made by the Legislature.

Seven Directors appointed.

Sec. 33. *And be it further enacted,* That there shall be appointed by the Governor, by and with the advice and consent of the Senate, seven Directors, whose term of service shall commence on the first Monday of March next, and continue for the term hereinbefore prescribed.

Governor to supply vacancies.

Sec. 34. *And be it further enacted,* That in case a vacancy shall occur, by death, or otherwise, among the Directors, it shall be the duty of the Governor for the time being, to supply such vacancy or vacancies by appointment, which shall continue until the next appointment of Directors; and in case any vacancy or vacancies shall occur among the Directors elected on the part of the stock-holders, the Directors elected by the stock-holders shall have power to supply such vacancy or vacancies by election.—And it is provided that in the event of a failure on the part of the State to appoint seven Directors, as is herein prescribed, the said corporation shall not, on that account, be dissolved—but the Governor of the State shall, after the rising of the Legislature, appoint the

said number of Directors, who shall continue in office for the time prescribed.

Five Directors to be elected.

Sec. 35. *And be it further enacted,* That so soon as there shall be stock in said Bank subscribed for, to the amount of two hundred thousand dollars, the superintendents appointed at the city of Natchez, shall call a meeting of the subscribers for stock, giving twenty days' notice thereof in the gazettes of Natchez.—And the said stockholders shall, at such meeting, elect five Directors, who shall remain in office until the next annual election of Directors.

APPROVED: February 10th, 1830.

Exhibit B.

CHAP. I.

AN ACT, Supplemental to an act, entitled "an act, to establish a Planters Bank in the State of Mississippi."

Sec. 1. *Be it enacted by the Senate and House of Representatives of the State of Mississippi, in General Assembly convened,* That on the First Monday of January next, further subscriptions for the residue of the One Million of Dollars reserved to be subscribed for, on the part of individuals, firms, or Bodies corporate, towards constituting the Capital of the Planters Bank established by the act to which this is a supplement; be opened at the following places, to wit: At the city of Natchez, under the superintendence of Thomas Bernard, James Foster, John Baynton, Samuel Gustine, Sturges Sprague, Henry Millard, Angus McNeil, and Thomas G. Ellis, for the residium of the Two Thousand Shares authorized to be subscribed for at said place, and remaining unsold; at the town of Vicksburg, under the superintendence of Thomas Warfield, William R. Campbell, Edward Mitchell, Anthony Durden, Samuel D. McCray, Thomas Arnold, and D. Wilkins for the amount of the residium of the Two Thousand Shares authorized to be subscribed for at said place; at the town of Port-Gibson, under the superintendence of Hardy W. Pope, William Neily, William R. McAlpin, Cornelius Haring, ——— Mitchell, Joseph Nicholls, and Joseph Callender, for the amount of Fifteen Hundred Shares; at the town of Woodville, under the superintendence of John Stevens, Joseph A. Foster, William Newell, Joseph Johnson, Arthur Daniel, Jeremiah Noland, Chauncey S. Kellogg, and William Brandon, for the amount of Twelve Hundred and Fifty Shares;

Subscriptions to be open'd for One Million dollars.

At what places and under whose superintendence.

at the town of Monticello, under the superintendence of Joseph Cooper, Thomas Collins, jun'r., Thomas W. Burge, Z. E. Pendleton, Arthur Fox, Peter Quin, and Charles Lynch, for the remainder of the Five Hundred Shares authorized to be subscribed for at said place; at the town of Rodney, under the superintendence of Christopher Dart, G. T. Tullis, David Hunt, Alexander Montgomery, N. L. Boulden, John Snodgrass, and John Ducker, for the remainder of the said shares authorized to be subscribed for at said place; at the town of Columbus, in the county of Lowndes, under the superintendence of Samuel Ragsdale, Charles H. Abert, George Shaiffer, Daniel W. Wright, William Dowsing, and Edward Randolph, for the remainder of the Five Hundred Shares, authorized to be subscribed for at said place; at the town of Liberty, in the county of Amite, under the superintendence of Francis Wren, Thomas Batchelor, Charles Davis, Edmund Smith, V. T. Crawford, S. Tillotson, Anthony M. Perryman, and Morgan Davis, for the amount of Five Hundred and Fifty Shares, heretofore authorized to be subscribed for at said place. And a majority of said superintendents at the aforesaid places, respectively, shall be authorized to perform the duties of their appointment, and are required to keep the subscriptions open for the term of Fifty Days, unless the aforesaid amounts be sooner subscribed for, when the same shall be closed, and the amounts so subscribed for shall be paid for by the several and respective subscribers in gold and silver coins, or the notes of the Bank of the State of Mississippi; or the Bank of the United States, or any of its Branches, one fifth at the time of subscribing, one fifth ninety days thereafter,

one fifth six months thereafter, one fifth nine months thereafter, and the remaining one fifth one year thereafter.

Duty of Superintendents.

Sec. 2. *And be it further enacted,* That the said several superintendents, at the aforesaid places respectively, shall on the first Monday of March next, transmit to the superintendents at the city of Natchez, a list of the several subscriptions at the said places respectively, and the superintendents appointed at the city of Natchez shall proceed thereon in the manner pointed out by the act to which this is a supplement.

Governor shall appoint 3 commissioners to negotiate a loan.

Sec. 3. *And be it further enacted,* That immediately after the passage of this act, the Governor, on the part of the State of Mississippi, shall appoint three Commissioners, with full power to negotiate a Loan or Loans, the aggregate amount of which shall not exceed Five Hundred Thousand Dollars, at an interest not exceeding six per centum per annum, payable half yearly, and a Bond or Bonds shall be executed by the Governor, in the name of the State of Mississippi, for the payment of the Loan or Loans, and the said Bonds shall be at the terms prescribed by the seventh section of the act to which this is supplemental: And the said Bonds so executed by the Governor shall be countersigned by the auditor of public accounts, and may be assigned by indorsement: And the said Commissioners shall have further power to agree upon the amount and forms of the bonds respectively, so to be executed by the Governor of the state as aforesaid, and shall appoint the place or places (not without the limits of the United States) at which the payments of the semi-annual interest, and the said bonds as they shall become due, shall be made.

Governor shall subscribe for five thousand shares.

Sec. 4. *And be it further enacted,* That at the opening of the further subscription to the capital stock of said Bank, the Governor of the state on the part thereof shall subscribe, or cause to be subscribed for, Five Thousand Shares of the stock of said Bank, amounting to five hundred thousand dollars.

Sec. 5. *And be it further enacted,* That the moneys arising from the loan hereinbefore directed, shall be applied to the payment of the five thousand shares authorized by this act to be subscribed for on the part of the state: And the faith of the state is hereby pledged for the payment of the principal and interest of said bonds, upon the falling due thereof; and that the stock of the state in the said Bank, shall be, and is hereby declared to be pledged for the payment of the same.

Faith of state pledged for payment of bonds.

No stockholder to receive dividend on greater am'nt than he paid in.

Sec. 6. *And be it further enacted,* That no individual, firm, or body corporate, who may be a stockholder in said Bank, shall be entitled to receive a dividend or dividends, upon a greater amount than such stockholder shall have actually paid in; and that no stockholder who may be in arrear for stock, shall be entitled to receive any dividend until such arrearages shall be paid.

On third Monday in March, stockholders to meet and elect Directors.

Sec. 7. *And be it further enacted,* That on the third Monday of March next, the stockholders in said Bank, shall convene at the city of Natchez, and proceed to the election of six Directors, in the manner prescribed by the act to which this is supplemental: And the superintendents appointed at the city of Natchez, are hereby required to give twenty days notice of said meeting by advertisement, in one or more of the gazettes of the city:

And the five Directors, to be elected in conjunction with the Directors appointed on the part of the state, as directed by the act incorporating said Bank, shall proceed to organize said Bank, and put it into operation, as soon thereafter as possible.

Repealing clause.

Sec. 8. *And be it further enacted,* That so much of the seventh and thirteenth sections of the act to which this is supplemental, as authorizes and requires the Governor to sell the stock of the state in the Bank of the state of Mississippi, and to execute bonds for one million of dollars, payable to the President, Directors and Company of the Planter's Bank in the State, be, and the same, are hereby repealed.

Additional Branch to be established at Monticello.

Sec. 9. *And be it further enacted,* That in addition to the branches to be established at the town of Rodney, in the county of Jefferson, and at the town of Vicksburg, in the county of Warren, which are provided for in the original bill, to which this is a supplement, it shall be the duty of said President and Directors, to establish, in like manner, and under the same rules and regulations, one other Branch at the town of Monticello, in the county of Lawrence, so soon as the said Bank shall be organized, and shall allot to said Branch a portion of their capital, not less than seventy thousand dollars, which may, at any time, be increased at the discretion of the said President and Directors, or by a resolution of the General Assembly of this state.

Approved, 16th *Dec.* 1830.

Exhibit C.

CHAP. XXXV.

AN ACT further to amend an act entitled "An act to establish a Planters' Bank in the State of Mississippi, approved February 10th, 1830, and the acts supplemental thereto."

Repealing clause.

Section 1. *Be it enacted by the Legislature of the State of Mississippi,* That the twelfth section of an act entitled "An act to establish a Planter's Bank in the State of Mississippi," be and the same is hereby repealed.

Governor to appoint six directors biennially.

Sec. 2. *Be it further enacted,* That there shall be biennially appointed by the Governor of the State of Mississippi, by and with the advice and consent of the Senate, six directors of said bank, who shall remain in office, and discharge the duties of directors from the first Monday in March then next ensuing, for the term of two years, and until other directors shall be appointed and duly qualified.

Stockholders shall on the first Monday in March, annually elect seven directors.

Sec. 3. *Be it further enacted,* That on the first Monday in March, in each and every year, the stockholders of said bank shall convene at the banking house of the principal Bank, and proceed to the election of seven directors of said bank on the part of said stockholders, in such manner as shall be hereinafter prescribed; and the directors elected in such manner shall remain in office for the term of one year, from the time of their election, and until other directors shall be elected, and duly qualified, and shall, together with the directors appointed as aforesaid by the Governor, by and with the advice and consent of the Senate, have the management and control of the affairs of said corporation: *Provided,* that no individual shall be capable of taking his seat as director of

said bank, without holding in his own right, at least ten shares of the capital stock thereof.

Directors to elect a President.

Sec. 4. *Be it further enacted*, That the directors of said bank, at their first regular meeting after the first Monday in March, in each and every year, shall proceed to elect by ballot, from their own body, a President, who shall hold his office for the term of one year thereafter; and the directors aforesaid shall allow him such compensation for his services as such, as they may deem proper.

Number of votes to which each stockholder is entitled.

Sec. 5. *Be it further enacted*, That the number of votes to which the stockholders of said bank shall be entitled in voting for directors, shall be according to the number of shares he, she or they respectively shall hold, in the proportion following, that is to say: for each and every share not exceeding ten shares, one vote; for every two shares above ten, and not exceeding fifty, one vote; for every five shares above fifty and not exceeding one hundred, one vote; and for every ten shares above one hundred, one vote; but no person, co-partnership, or corporation, shall be entitled to a greater number than one hundred votes; and no share or shares shall confer the right of voting, which shall not have been holden three calendar months, previous to the day of election: *Provided*, that the stockholders shall have the right of voting by proxy.

Proviso.

President and directors to cause books of subscription to be opened.

Sec. 6. *Be it further enacted*, That the President and directors of said bank are hereby empowered and required to cause books of subscription for the capital stock of said bank unsubscribed, to be opened at such places as are designated in the original charter, to which this is an amendment, at Manchester, in the county of Yazoo, and Jack-

Directors and company of the Planters Bank be, and they are hereby authorized and empowered to negotiate a loan or loans, the aggregate amount of which shall not exceed one million five hundred thousand dollars, at an interest not exceeding six per cent. per annum, payable half yearly; and a bond or bonds shall be executed by the Governor of the State of Mississippi, in the name of the State, for the payment of the loan or loans, and interest thereon; and the said bonds shall be payable in the manner following, that is to say: five hundred thousand dollars to be due, and payable on the first day of March, one thousand eight hundred and sixty-one; five hundred thousand dollars on the first day of March, one thousand eight hundred and sixty-six; and five hundred thousand dollars on the first day of March, one thousand eight hundred and seventy-one; and the said bonds so executed by the Governor, shall be countersigned by the Auditor of Public Accounts, and may be assigned by endorsement, and the said President, Directors and Company shall have further power to determine upon the amount and form of the bonds respectively, so to be executed by the Governor of the State as aforesaid, and shall appoint the place or places at which the payments of the semi annual interest and the said bonds as they become due, shall be made.

Governor to execute bonds for payment of loan.

Sec. 12. *Be it further enacted,* That the proceeds of the said loan or loans shall be applied to the payment of stock in the Planters Bank, which shall be subscribed for and paid in, as is directed in the different acts to which this is an amendment; and the said stock and the faith of the State are hereby pledged for the redemption and pay-

The stock and faith of the State pledged for redemption of bonds.

ment of said bonds, and all interests thereon as they respectively become due.

Surplus to be paid over to the sinking fund.

Sec. 13. *Be it further enacted,* That if there shall be any surplus of the proceeds of said loan or loans, after paying the said subscription for stock, and the expense of negotiating the same, said surplus shall be paid over to the commissioners of the sinking fund, and become part thereof.

Branch banks to be established.

Sec. 14. *And be it further enacted,* That the President, Directors and Company of the Planters Bank shall, when the proceeds of the bonds herein provided for, shall have been converted into stock, as contemplated by this act, establish the following branches, viz:—A branch at Jackson, in the county of Hinds, with a capital of one hundred thousand dollars; a branch at Columbus, in the county of Lowndes, with a capital of two hundred thousand dollars, and a branch at Manchester, in the county of Yazoo, with a capital of three hundred thousand dollars; which branches so established, shall exercise all the powers, and be subject to all the provisions heretofore prescribed in the several acts to which this is an amendment. The President, directors and company shall have power to increase the amount of capital at any or all of the branches, at their discretion.

Capital stock may be increased.

Sec. 15. *And be it further enacted,* That the capital stock of the Planters Bank may be increased on the part of individuals, firms or bodies corporate, in the further sum of one million of dollars, for which sum, books of subscription shall be opened as heretofore, provided, whenever the President, directors and company of said bank

shall deem it expedient to enlarge the capital as aforesaid.

Repealing clause.

Sec. 16. *Be it further enacted,* That all acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed; and this act shall go into operation and be in full force and effect immediately on its passage and its being accepted by the directors of the Planters Bank, according to the provisions of the acts to which this is an amendment.

Approved, February 5th, 1833.

Exhibit D.

26th September 1933

His Excellency the Minister of State
of the Principality of Monaco

Your Excellency,

The writers of this letter namely, Dudley Churchill Marjoribanks Baron Tweedmouth of 57, Seymour Street, London, W. 1. Giovanni del Drago of New York City, New York, U. S. A. and The Honourable Mary Euphemia Elliot of 14, Porchester Court, Porchester Gardens, London, W. 2. are together the holders of $10,000 nominal Planters Bank Bonds 1831/33 and $90,000 nominal Mississippi Union Bank Bonds 1838 which have been handed down from their respective families who purchased them at the time of their issue by the State of Mississippi.

The State of Mississippi has long since defaulted on the principal and interest of these Bonds, the holders of which have waited for some 90 years in the hope that the State would meet its obligations and make payment.

Our Lawyers have advised us that there is no basis on which we can maintain a suit against Mississippi on these Bonds, but that such a suit could only be maintained by a foreign Government or one of the United States.

In view of this fact we would prefer to have the Principality of Monaco use the Bonds for such purposes as it sees fit rather than to continue to hold the Bonds ourselves.

In these circumstances, we are enclosing with this letter our original Bonds to the nominal value of $100,000 as an

unconditional gift to the Principality of Monaco and we would be pleased if the Government of the Principality were to apply the Bonds to the causes of any of its Charities, to the furtherance of its internal development or to the benefit of its Citizens in such manner as it may select.

We are, Your Excellency,
Your obedient Servants,

TWEEDMOUTH
G. DEL DRAGO
MARY E. ELLIOT.

Exhibit E.

AN ACT to incorporate the subscribers to the Mississippi Union Bank.

§ 1. *Be it enacted by the Legislature of the State of Mississippi,* That an institution shall be established under the title of "The Mississippi Union Bank," with a capital of fifteen million five hundred thousand dollars, which said capital shall be raised by means of a loan, to be obtained by the directors of the institution.

Books of subscription to be opened.

§ 2. *Be it further enacted,* That books of subscription, for the sum of fifteen million five hundred thousand dollars, divided into shares of one hundred dollars each, and intended to secure the loan of said fifteen million five hundred thousand dollars, shall be opened after twenty days' notice given in all newspapers published in this state, and in all counties in which no newspaper may be established, notice shall be given by advertisement, posted up in three of the most public places in each of said counties, immediately after the promulgation of this act, under the inspection of ten managers, to be chosen by joint ballot, by the legislature; said books of subscription shall be kept open from 10 o'clock, A. M., until three, P. M., at the seat of government of this state, which said books shall be continued open for the six next ensuing months, and at the termination of which period of time, they shall be closed; immediately after the expiration of said term, the directors to be appointed, as hereinafter provided for, or a majority of them, shall make a correct statement of the said subscriptions; and in case the whole sum subscribed for, shall amount to more than fifteen million five hundred thousand dollars, the said directors or a majority of

them, shall deduct the amount of such excess from, first, the stock of which sufficient security shall not be offered, and then from the largest subscriptions, in such manner, that no subscription shall be reduced in amount, while any one remains larger; and in case the whole amount of one hundred and fifty thousand shares shall not have been subscribed at the time of closing said subscription books, then the said subscription books shall be reopened on the first day of March in each and every year thereafter, under the inspection of directors appointed, as hereinafter provided for; and the said books of subscription shall be kept open for the space of forty days in each year, until the full amount of said one hundred and fifty thousand shares shall have been subscribed for; the managers shall publish, during twenty days, notice in the different newspapers published at Jackson, Vicksburg, Natchez, Port Gibson, Woodville and Columbus, and the balance of the newspapers published in this state, notice of the day and place when said books of subscription may be opened: the deductions to be made by virtue of this section, shall be fair and equitable, and without reference to any particular place or places, and to be regulated in the manner prescribed by this section.

In case the whole amount is not subscribed, books to be reopened.

Kept open for the space of 40 days.

§ 3. *Be it further enacted,* That books of subscription for the stock of said bank shall be also opened at the seat of justice in each county in this state, under the inspection of three managers at each of the aforesaid places, who shall be elected by the legislature, viz: for the county of Amite, E. M. Davis, Wm. H. Dillingham and V. T. Crawford; for the county of Adams, Joseph Neibert, Arthur Fulton and Noah Barlow; for

Books to be opened at the seat of justice in each county.

the county of Attala, Gordon D. Boyd, Joel Harvey and Richard Ross; for the county of Marshall, C. Kyle, Byrd Hill and —— Randolph; for the county of Claiborne, Joseph H. Moore, Benjamin Hughes, Joseph O. Pierson; for the county of Clarke, William Covington, Allen McClenden and Thomas Watts; for the county of Carroll, Wm. Blank, Wm. Y. Collins, John E. Palmer; for the county of Covington, Jesse McAfee, Daniel M. Laurin and Archibald Anderson; for the county of Choctaw, Reuben Box, John R. Golden and John Snow; for the county of Copiah, Hardin Burnley, Wm. Barnes and Benjamin Weeks; for the county of Lauderdale, Epps Brown, Duncan Calhoun and John Alexander; for the county of Jasper, Asa Hartfield, John W. Hendrick and Seymour White; for the county of Jefferson, J. B. Coleman, John M. Whitney and H. N. Flemming; for the county of Jackson, Samuel Davis, Patrick Ward and B. Childers; for the county of Kemper, J. A. Marshall, Benjamin C. Oppetts and John C. Thomas; for the county of Jones, John Moffit, Duncan Thompson and Lennon B. Ellis; for the county of Holmes, James Higgins, Robert Cook and Arthur Hays; for the county of Greene, Isham Moody, Daniel F. McInnis and Alexander McLeon; for the county of Lawrence, Robert Jelks, John McGaha and Henry Calhoun; for the county of Leake, George S. Fitler, Geo. W. Wilson and Warren Todd; for the county of Lowndes, John A. Hogg, George Good and William H. Walsh; for the county of Madison, J. Silverburg, John Munce and William Montgomery; for the county of Marion, Allen Barnes, James Atkerson and William Rankin; for the county of Monroe, James H. Bell, George Wightman and W. L. Mor-

gan; for the county of Neshoba, William Donaldson, William Herbert and Bird Safford; for the county of Noxubee, James Moore, James T. Harrison and Joseph H. Frith; for the county of Octibbeha, Robert A. Lampkins, A. Bell and John Billington; for the county of Perry, Abner Carter, Archibald McCallum and John S. Hoaze; for the county of Pike, R. T. Sparkman, S. M. Catching and A. R. Green; for the county of Rankin, William H. Shelton, Thomas S. N. King and Charles A. Folsom; for the county of Scott, John T. Smith, Moses Collins, and S. D. Young; for the county of Simpson, N. Freeman, J. J. H. Morris and Joseph Boggan; for the county of Smith, John Campbell, John Thornton and Jacob Carr; for the county of Tallahatchie, Augustus L. Humphrey, Ninian McCracken and Washington W. Mitchell; for the county of Washington, Wm. P. Montgomery, Anderson Miller and Robert McCullough; for the county of Wilkinson, John L. Wall, Wm. C. S. Ventress and Thomas S. Herbert; for the county of Winston, George W. Thomison, Hillery Portwood and Benjamin Prestrege; for the county of Wayne, D. C. Shaw, S. H. Lang and William Towner; for the county of Franklin, Robert Anderson, John F. Witherspoon and Thomas Rowan; for the county of Yalobusha, John Brown, John B. Pass and William Fly; for the county of Warren, Wm. M. Pinkard, J. J. Chewning and William Henderson; for the county of Pontotoc, John Bell, Joel Pinson and Thos. J. Word; for the county of Ponola, Thos. B. Hill, Augustus B. Sanders and B. B. Wilson; for the county of Bolivar, Wm. B. Cook, Peter Wilkinson and Francis Patterson, senior;

for the county of Lafayette, Alex. T. Caruthers, Beverly Mitchell and Thomas Lane; for the county of Hancock, G. B. Toulme, Samuel White and Willis H. Arnold; for the county of Yazoo, Robert L. Batie, Lineas B. Markham and Robert C. Campbell, and the said managers, or a majority of them, shall keep the aforesaid books open at each of the aforesaid places, from ten o'clock in the morning until two o'clock in the afternoon on Tuesday of each week, for the space of three months, at such house as they shall designate, they giving thirty days previous notice, by advertisement in the newspapers published in said counties, if any, and in the most contiguous, should there be no newspapers in the counties for which said books of subscription are to be opened for, of the time and place said books will be opened: the said managers shall have all the power and authority granted, by this act, to the managers appointed to receive subscriptions at the place designated for the location of the parent bank; and said managers shall immediately after the expiration of the three months, said books are required to be kept open, transmit to the managers of the parent bank, the books of subscription so opened by them at the aforesaid places, together with all the titles, and other documents that may have been deposited with them, in order that the board of directors of the mother bank may finally decide on the validity and sufficiency of the titles so transmitted by them, before the subscribers may be declared to be stockholders, as hereinafter provided for; and should any, or either, of the managers herein appointed, fail or refuse to act, then the managers elected to open

Should any of the managers refuse to act.

the books at the seat of government, or a majority of them, may supply all vacancies.

Owners of real estate and not citizens of Miss.

§ 4. *Be it further enacted,* That the owners of real estate, situated in the state of Mississippi, and who are citizens thereof, shall be the only persons entitled to subscribe; and shares so subscribed, shall be transferable only to such owners, until after five years, when they may be transferred to any owner of real estate in this state, whether citizens or not: *Provided however,* to secure the capital or interest of said bank, mortgage shall be given on property of a sufficient character, and of an imperishable nature.

Faith of the state pledged.

§ 5. *Be it further enacted,* That in order to facilitate the said Union Bank, for the said loan of fifteen million five hundred thousand dollars, the faith of this state be, and is hereby pledged, both for the security of the capital and interest, and that seven thousand five hundred bonds of two thousand dollars each, to wit: eighteen hundred and seventy-five, payable in twelve years; eighteen hundred and seventy-five, in fifteen years; eighteen hundred and seventy-five, in eighteen years; and eighteen hundred and seventy-five, in twenty years, and bearing interest at the rate of five per cent. per annum, shall be signed by the governor of the state, to the order of the Mississippi Union Bank, countersigned by the state treasurer, and under seal of the state; said bonds to be in the following words, viz:

Interest at 5 per cent. per annum.

$2,000.

Form of the bonds given by the state

Know all men by these presents, that the state of Mississippi acknowledges to be indebted to the Mississippi Union Bank, in the sum of two thousand dollars, which sum the said state of Missis-

sippi promises to pay, in current money of the United States, to the order of the president, directors and company, in the year with interest at the rate of five per cent. per annum, payable half yearly at the place named in the endorsement hereto, viz:

On the of every year until the paymeny of the said principal sum: in testimony whereof, the governor of the state of Mississippi has signed, and the treasurer of the state has countersigned, these presents, and caused the seal of the state to be affixed thereto, at Jackson, this in the year of our Lord

governor,
treasurer.

Bonds transferable.

§ 6. *Be it further enacted,* That the said bonds may be transferable by the endorsement of the president, and of the cashier of said bank, to the order of any person whomsoever, or to the bearer; and the said endorsement shall fix the place the said principal and interest shall be paid; and all expenses incurred thereon, shall be defrayed from the funds of the bank.

Capital and interest to be paid when due.

§ 7. *Be it further enacted,* That both the capital and interest of the said bonds shall be paid by said bank, at the times they shall severally fall due.

Mortgage to be given.

§ 8. *Be it further enacted,* That to secure the payment of the capital and interest of said bonds, the subscribers shall be bound to give mortgage, to the satisfaction of the directors, on property, to be in all cases equal to the amount of their respective stock, which mortgage may bear on cultivated lands, plantations and slaves; on town lots, with houses thereon; on other buildings, yielding

a rent; on lands not under cultivation, but susceptible of being cultivated; and on vacant lots, capable of being improved, with this provision, that not more than one-fifth of the stock of each stockholder, may be secured by mortgage on unimproved lands, not included in any plantation, and on vacant lots in town: no mortgage on slaves alone shall be received; and that when a mortgage shall be offered on lands and slaves, the value of the lands shall be equal to three-fourths of the stock for which the mortgage shall be given; that houses or other buildings, situated in any city or town, shall always be insured against the risk of fire, and the policy of the insurance transferred to said Union Bank; but it shall not be required to have the buildings on any plantation insured; no mortgage shall be received on a brick building for more than one-half of its value; and on a wooden building for more than one-fourth; and that no one shall be permitted to subscribe until he shall deliver to the commissioners a valid act of sale, or patents, or certificates of conformation from the land commissioners of the United States, or partition sales and adjudication by a decree of a court, verified according to law, or such other evidence of title to the property proposed as a guarantee to the bank, as may be deemed satisfactory to said commissioners or directors; that property already mortgaged may be received as a guarantee: *Provided,* That the directors shall first deduct from the whole value of the property, at least twice the amount of said mortgages, and then grant such, only on the excess remaining after the deduction: *Provided further,* That the mortgage existing on said property, shall not prevent the board of directors from receiving them

Mortgage on slaves not received.

Buildings to be insured.

as security for stock, when the sum to be loaned is to be employed in the extinguishment of said mortgage.

Incorporation of the subscribers.

§ 9. *Be it further enacted,* That the subscribers of the said Union Bank be, and they are hereby, created a corporation and body politic, for and during the term of forty years from the passage of this act, and shall be, and are hereby, made capable, under the name and style of the Mississippi Union Bank, to receive and possess all kinds of property, either moveable or immoveable, and to sell, alienate, demise and dispose of the same; to loan, to negotiate, to take mortgages and pledges; and to discount on such terms, and such securities, as they shall judge proper: *Provided,* That the whole amount of their accounts and goods, of every description, do not exceed double the amount of the capital actually received; the profits realized, and in the possession of the bank, being always considered as a part of their capital: *And, provided, also,* That the debts due by the bank, exclusive of deposits, shall not exceed double the amount of their capital; and that they shall not take more than seven per cent. interest per annum, on any loan or discount; or interest exceeding six per cent. per annum on any loan or discount made on notes to order, payable within six months from the time the loans or discounts are made; and they may sue or be sued, plead and be impleaded, answer and receive answers, in all courts having competent jurisdiction; and to have a common seal, and the same to alter or renew at pleasure; and to ordain and establish such by-laws, rules and ordinances, as they shall deem necessary and suitable for the government of said corporation, not being contrary to this

Authority to enact by-laws.

act, nor to the constitution and laws of the United States and the laws of this state.

Number of directors, and how chosen.

§ 10. *Be it further enacted,* That for the management of the affairs of said bank, there shall be thirteen directors, chosen from among the stockholders; five of whom shall be elected and chosen by the legislature, by joint vote of both houses, biennially; and, upon the part of the stockholders, eight shall be annually chosen, at the banking-house of the said bank, by the qualified stockholders of the capital of said bank; each stockholder to have one vote, for every share held by him; but no person, copartnership or firm, shall be entitled to a greater number than one hundred votes, and no one shall be entitled to vote by proxy, more than six hundred votes: the appointments on the part of the state, to be made during the first term of the meeting of the legislature, at their regular and constitutional meetings, after the passage of this act.

Cash required of stockholders.

§ 11. *Be it further enacted,* That those who shall become, and be declared stockholders to the institution, under the provisions of this act, shall be required to pay in cash, the sum of ten dollars over to the commissioners or directors, or their agents, on each and every share subscribed for by them, at such time as may be required by the said directors.

After closing books, the institution to go into operation.

§ 12. *Be it further enacted,* That after the closing of the books, and when it shall appear that at least five hundred thousand dollars shall have been subscribed, and paid in, on the original stock of the capital of said bank, the said institution shall go into immediate operation, under the provisions hereinafter mentioned.

§ 13. *Be it further enacted,* That the legislature shall, upon joint vote, appoint three commissioners in each of the districts of the state hereinafter designated, whose duty it shall be to ascertain, and appraise, the property of those who wish to become stockholders in the institution, as well as those who are desirous to obtain loans on mortgage; and the said commissioners shall deliver to all persons whose property they appraise, detailed and authentic certificates of its value, of the number of acres of which each is composed, how many acres are under cultivation, and how many are capable of being cultivated, and how many are not; the nature of the culture, the number of slaves, and their condition, age, and sex, and the number of animals employed; the number and quality of the buildings, and an estimate of each and all, which certificate must be signed and sworn to before a judge or magistrate, or some one authorized to administer oaths, by said commissioners, or a majority of them.

Commissioners to be appointed by the legislature.

Sworn.

§ 14. *Be it further enacted,* That so soon as five thousand shares shall have been subscribed, in the manner herein provided for, the governor of the state shall provisionally appoint thirteen directors, who shall serve for twelve months, and it shall be the duty of the said directors to choose a president of the said Mississippi Union Bank, and who shall be chosen from among themselves; and the president thus chosen, shall remain in office twelve months following their appointment; and that so soon as the directors are appointed, and the president chosen, the power of the commissioners appointed to receive the subscriptions, and the papers relating thereto, and in the posses-

President to be chosen.

sion of the commissioners, shall be delivered over to the board of directors.

Annual election of directors.

§ 15. *Be it further enacted,* That after the first appointment, an annual election of eight directors, for the stockholders, shall be held on the first Monday in March of each and every year; and the said directors, except those upon the part of the state, shall be elected by the stockholders, or their attorneys, with the restrictions before recited, after public notice of the same is given in the newspapers published at Jackson, Vicksburg, Natchez, Woodville, Port Gibson, Columbus and Manchester, thereby designating the time and place of said election, when the stockholders shall meet for that purpose: the time thus fixed shall be at least two months after the publication of such notice and law; and said directors shall be elected by a plurality of votes: *Provided,* the said shares shall have been held three calendar months previous to the election, otherwise the holders thereof shall not be entitled to vote, and the directors shall remain in office from the second Monday of March, to the same month in the year following; and the board of directors shall every year, at the first meeting after their election, elect one of the directors to be president of the said institution, and who shall remain in office during the term for which said directors were elected as above stated: *Provided, always,* That if an election or appointment of directors, or of a president, shall not take place at the period fixed by the present act, the corporation shall not on that account be dissolved, but it may be lawful at any other period to hold said election, or make new nominations as the case may be; and the manner and place of holding the elections, shall be fixed by

New nominations.

the by-laws and ordinance of the board of directors; and until such elections, the president and directors of the said Union Bank shall be continued in office: *And provided also,* That in case of vacancy arising from death, resignation, absence from this state for the term of six months, non-acceptance, refusal to qualify, or removal from office of any director, the vacancy shall be filled by the board of directors.

Vacancy arising.

§ 16. *Be it further enacted,* That the cashiers, tellers, book-keepers, and all other officers, and servants of the bank, shall give bonds, with security to be approved of by the president and directors of said institution, for the faithful discharge of their duties, and that their appointment shall be made by the direction of the bank; and they may be removable at the pleasure of said direction, and their salaries be fixed by the said board of directors; who may be increased or diminished, as may be deemed necessary by said board.

Security given by the officers.

§ 17. *Be it further enacted,* That no individual can be a director of said bank, who is not a citizen, domiciliated in the state, and who does not at the time of his election, in his own right, hold at least thirty shares of the capital stock of said bank; and no emolument, privilege or compensation shall be allowed said director, excepting the president, as herein provided for; nor any one be a director, who is a director of any other bank, nor his partner, nor two persons in partnership or having a joint interest in trade, be at the same time directors of said Union Bank; and if after being elected or appointed, any director should fail, he shall be incapable of holding his office, and

Qualification of directors.

another shall be elected in his place, as herein provided for, with this provision; that if the director who shall become incapable of holding his office, or shall resign, or refuse to act, the vacancy shall be filled by the board of directors, or if a director upon the part of the state, shall be appointed by the governor.

Notes not less than 10 dollars.

§ 18. *Be it further enacted,* That said corporation shall not issue any note, bill or check, for a less sum than ten dollars, and if payable to order, they shall be transferable by endorsement, and if payable to bearer, they shall be transferable by delivery.

See the 18th sect. of the supplemental act hereunto appended, passed in Feb. 1838.

§ 19. *Be it further enacted,* That the whole of the profits of the said Union Bank shall remain with, and be employed by the directors as a part of its capital, until the full payment of that portion of the bonds of the state specified in the fifth section, which will be payable in twelve years, after which, one-fourth of the profits then realized shall be divided among the stockholders, in the proportion to which they shall be entitled respectively; and the whole of the remaining and subsequent profits of the bank, shall be employed by the bank, until the full payment of the bonds of the state, which will be payable in fifteen years; after which, one-fourth of the profits then realized shall be divided out among the stockholders, as before provided for and mentioned, and the whole of the remaining and subsequent profits shall be employed by the bank, until the full payment of the bonds of the state, which will be payable in eighteen years; after which, one-fourth of the profits then realized, shall be divided as aforesaid; and the whole amount of the remaining and subse-

quent profits shall be employed by the bank, until the final payment and extinguishment of all the bonds of the state in favor of this institution; and after which, the whole of the profits shall be divided as aforesaid, and all subsequent profits be divided annually, with this provision: that in consideration of the bonds made by the state, in addition to a voice in its direction, the state shall be entitled to one-tenth part of the whole profits of the bank, which one-tenth part shall be paid into the treasury, at the times and in the proportions provided for by this section to the stockholders.

Stockholders allowed to examine the affairs of the bank.

§ 20. *Be it further enacted,* That quarterly, in each and every year, from the first of January next, after the establishment of the said Union Bank, the stockholders who desire it, may be allowed to examine the affairs of the bank; and it shall be the duty of the board of directors of the parent bank, to furnish free access and inspection of the books (save the private deposites of individuals) of the institution to the stockholders, and to give them any information they may desire touching the management of said bank.

Payments.

§ 21. *Be it further enacted,* That the said corporation shall never refuse specie payment, in current coin of the United States, or suspend payment of any of their notes, bills, or obligations, or of any funds received by them on deposite; and if ever the said corporation shall refuse or suspend the said payment, the bearer or holder of any note or obligation, or any person having the right to demand or receive the same, or receive the amount of any deposites as before recited, shall be entitled to receive and recover

damages at the rate of fifteen per cent. per annum.

Revocation of the charter.

§ 22. *Be it further enacted,* That if by the first day of January, eighteen hundred and thirty-nine, three thousand shares shall not have been subscribed for, it may be lawful, as the opinion of the legislature may decide upon, to revoke this charter.

Power given to board of directors of parent bank.

§ 23. *Be it further enacted,* That the board of directors of the parent bank shall have power to make regulations and ordinances for the government of the affairs of the bank, and to pass by-laws for the same, which they may alter, amend, or add to, as the interest of the corporation may require; and they shall establish rules for the conducting the affairs of said bank, which they may in like manner alter, amend, or add to, as may be necessary for the service of the said bank, the same being not contrary to law.

Duty of board of directors.

§ 24. *Be it further enacted,* That it shall be the duty of the board of directors to keep a set of books, in which all their deliberations, rules and ordinances, shall be entered; and the legislature shall have power at any time to appoint a committee to examine said books of deliberations, rules and ordinances, and to ascertain the amount of cash, the amount of notes in circulation, and a complete and accurate list of the balances due the bank, as well as the amount of deposites, and all other affairs of said bank, so as to be informed of its true situation, and be enabled to make a full report thereof to the legislature.

Capital of the bank exempt from taxation.

§ 25. *Be it further enacted,* That the capital of said bank shall be exempt from any tax imposed

by this state, or by any county or body corporate, under the authority of this state, for and during the continuance of its charter.

Powers of the board of directors in relation to loans, mortgages, &c.

§ 26. *Be it further enacted,* That the board of directors shall be judges of the sufficiency of the mortgages offered for stock and loans, and shall have power to reject the same if not sufficient; and in such case may require other security, or in default thereof, reduce the shares of such defaulters to the amount sufficiently secured; they may also require other and additional security, on the renewal of any loan, note, or accommodation, for which application may at any time be made, if in their opinion, the original security is not sufficient, safe or satisfactory; that the loans of the bank and mortgages for stock, and loans granted by virtue of this act, shall bear ten per cent. interest per annum after maturity, if not punctually paid; and the Mississippi Union Bank shall have the right to cause to be seized and sold, according to the laws of this state, the property so mortgaged, in whose hands soever it may be found, in the same manner, and with the same facilities, as if it was found in the hands of the mortgagor, notwithstanding any change of title by inheritance or otherwise.

Should a stockholder fail.

§ 27. *Be it further enacted,* That if a stockholder should fail, he shall be divested of his quality of stockholder, and his share or shares shall be sold by the board of directors, with all the rights and credits thereto belonging.

In relation to individuals who have obtained loans.

§ 28. *Be it further enacted,* That if any individual who shall have obtained from said bank a loan, secured by mortgage, as herein provided for, shall make a voluntary or forced surrender of his

property to his creditors, the said surrender shall not impair the right of the bank to any mortgaged property; and said mortgaged property shall not be comprised in any cession or estate, until the full payment is previously made of the sum due the bank, and secured by mortgage; and the bank may proceed by order of sale, in the same manner as if no surrender had been made; and any surplus of the proceeds of such sale, after paying the debt due the bank, shall be paid over to the person's legal representatives; in no case shall the applying for, or obtaining a respite from creditors, in any manner impair or affect the right of the bank, to recover all loans secured on the property of such persons; nor shall any act of seizure, or the execution of property be, in any manner delayed, or influenced thereby.

§ 29. *Be it further enacted,* That the bonds, with the privileged mortgages, for the sum of fifteen millions five hundred thousand dollars subscribed by the stockholders of said bank, according to their shares, for the purpose of securing the loan of fifteen million five hundred thousand dollars, shall be deposited in the office of said institution, as security for the reimbursement of the capital as well as interest of said bonds granted by the state; and, whenever application shall be made by a stockholder, to transfer his stock, and be discharged, such transfer and discharge may take place upon the new stockholder's furnishing mortgage to the satisfaction of at least a majority of all the directors; in all such cases of transfer and discharge, the vote shall be taken by yeas and nays.

Transfer or discharge of a stockholder.

§ 30. *Be it further enacted,* That as soon as directors are appointed, as herein before provided for, they shall proceed to the election of a president, and the same shall be notified to the governor of the state, who will, thereupon execute to the said bank, from time to time, bonds in amount proportioned to the sums subscribed, and secure to the satisfaction of the directors, as required by the charter, until the whole amount of fifteen millions five hundred thousand dollars shall be furnished in bonds, as herein before provided for.

Time to elect president.

Governor execute bonds.

§ 31. *Be it further enacted,* That the state of Mississippi shall be entitled to a credit of two hundred thousand dollars, on furnishing notes or obligations for such sum as may be required to be used, and paying the usual interest annually, and in advance; and each and every stockholder shall be entitled to a credit equal to one-half of the total amount of their respective shares, which shall bear interest at the rate of seven per centum per annum; four per cent of such loans and interests shall be paid annually; and the individual notes of the stockholders renewed annually, until the whole loan shall be paid and extinguished.

See the 18th sec. of the supplemental act hereunto appended.

§ 32. *Be it further enacted,* That there shall be established seven offices of discount and deposite, as follows, to wit:

Number of offices.

First. One at Macon, in the county of Noxubee, for the use and accommodation of the counties of Lowndes, Octibbeha, Winston, Noxubee, Kemper, Lauderdale and Neshoba, with a capital of one million eight hundred thousand dollars.

Office at Macon.

Second. One at Augusta, in the county of Perry, for the counties of Clark, Jasper, Covington,

At Augusta.

Jones, Wayne, Jackson, Hancock, Greene, Perry and Marion, with a capital of one million of dollars.

At Aberdeen.

Third. One at Aberdeen, in the county of Monroe, for the counties of Monroe, Itawamba, Tishemingo, Tippah, Pontotoc, Chickasaw and Marshall, with a capital of one million of dollars.

At Lexington.

Fourth. And one at the town of Lexington, in the county of Holmes, for the counties of Yazoo, Holmes, Carroll, Choctaw, Attala and Leake, with a capital of one million nine hundred thousand dollars.

At Tillatoba.

Fifth. And one at the town of Tillatoba, in the county of Tallahatchie, and for the counties of Yalobusha, Tallahatchie, Lafayette, De Soto, Ponola and Tunica, with a capital of one million three hundred thousand dollars.

At Vicksburg.

Sixth. One in the town of Vicksburg, in the county of Warren, for the counties of Claiborne, Warren, Washington, Bolivar and Coahoma, with a capital of one million five hundred thousand dollars.

At Liberty.

Seventh. One at Liberty, in the county of Amite, and for the counties of Pike, Amite, Wilkinson, Adams, Franklin and Jefferson, with a capital of two millions of dollars.

At Jackson.

The counties of Madison, Hinds, Copiah, Simpson, Rankin, Scott, Smith and Lawrence, to be the eighth district, and to be supplied by the mother bank.

Location of parent bank.

§ 33. *Be it further enacted,* That the parent bank of the Mississippi Union Bank, shall be located in Jackson, in the county of Hinds.

§ 34. *Be it further enacted,* That there shall be annually appointed by the board of directors of the mother bank, to administer the affairs of said office of discount and deposite, nine directors, citizens of the state, residing and domiciliated within the counties for which said offices shall be established, five of whom shall constitute a quorum to transact business; and said directors shall choose from among themselves a president, and shall be subject to all such regulations and rules as may be adopted by the said board of directors of the mother bank, for the government of said offices, not inconsistent with the provisions of this charter. Directors of branch bank.

§ 35. *Be it further enacted,* That there shall be appointed for each of the aforesaid offices of discount and deposite, a cashier, teller, and clerk, and other officers or servants that may be required, all of whom shall enter into bond for the faithful discharge of their duties; the amount and conditions of which said bond shall be specified and provided for by the said directors of the mother bank; and the said directors of the mother bank may remove, at their pleasure, any officer in said offices of discount and deposite, whenever the better management of the bank may require such a removal. Officers of branch bank.

§ 36. *Be it further enacted,* That the directors of said offices of discount and deposite, shall appropriate two-thirds of the capital of each office, to loan on mortgage, and one-third to loan on promissory notes and bills of exchange, as far as practicable, and the nature of the applications will enable them so to do; and the board of directors of said offices of discount and deposite may loan or discount upon notes secured by mortgage. Quality of loans.

Renewal of bonds.

§ 37. *Be it further enacted*, That persons borrowing on mortgage, shall be allowed at the end of twelve months to renew their bonds or notes for twelve months longer, during the space of eight years from the date of their respective loans or discounts: *Provided*, that they pay and reimburse at the time of each renewal, one-eighth of the whole sum originally loaned or discounted to them, as well as the interest upon the sum for which their said bonds shall be thus renewed; so that at the expiration of eight years, the whole sum originally loaned or discounted to them, together with the interest thereon, be entirely paid and extinguished: *And provided also*, that loans made on mortgages after the twelfth year of the charter, after being paid and fully reimbursed, similar loans may again be made, and renewable and payable in the same manner as herein before mentioned.

Rate of interest not to exceed 7 per cent.

§ 38. *Be it further enacted*, That the loans to be made by said Union Bank, shall be at a rate of interest not exceeding seven per cent. on mortgages or bonds and promissory notes, payable at a term of more than six months; and not more than six per cent. on notes or bonds renewable at six months, or at a shorter time; nor shall said bank deal in exchange, domestic or foreign, at a higher rate than six per cent. per annum discount on six months' bills, or a shorter term, and seven per cent. on bills at a longer term.

Removal of offices.

§ 39. *Be it further enacted*, That when either of the said offices of discount and deposite, shall not yield on any one year, except the two first years from the commencement of the operation, a nett interest of six per cent. per annum upon the

capital invested therein, the directors of the mother bank shall then remove said office to any other place in the same district, which to them may seem proper, or withdraw the same, as they may deem advisable.

Provision after removal of an office.

§ 40. *Be it further enacted*, That in case any of the branches of the Mississippi Union Bank should be withdrawn, in consequence of a failure to realize the required interest, then a sum equal to the capital of said branch shall be loaned by the parent bank, as provided for, exclusively to the citizens of those counties for which said bank was established.

Loans.

§ 41. *Be it further enacted*, That the said offices of discount and deposite, may lend money to the citizens of any other county, not enumerated in the district for which said branch was established, when there are not sufficient applications for the counties for which said offices are established.

Four last years of the charter.

§ 42. *Be it further enacted*, That the four last years of the time allowed for the continuance of this charter, shall be exclusively employed in winding up the affairs of the institution, and that no new loans or discounts shall be given or allowed during the said last four years of the charter.

Eight banking districts.

§ 43. *Be it further enacted*, That the state shall be divided into eight banking districts, in seven of which said districts there shall be established a branch of said bank, with the capital before provided for to each, for the purpose of affording banking facilities to the citizens of those counties that compose said districts; the mother bank shall be required to do the additional business of one district.

Stock to be refunded.

§ 44. *Be it further enacted,* That after the sale of the bonds for raising the capital of said Union Bank herein before provided for, and after the realizing the proceeds of said sale on said bonds, it shall be the duty of the board of directors of said bank to refund and pay over to the subscribers to the capital stock of said bank, the amount paid by them in cash on the said stock, as required in the eleventh section of this act, with interest at the rate of five per cent. per annum; said refunding to take place, and be made as follows: one-third in thirty days; one-third in sixty days, and one-third in ninety days, after the said time herein above recited and provided for.

Salary of commissioners.

§ 45. *Be it further enacted,* That the board of directors of said Union Bank, are hereby authorized and empowered to fix such salary or compensation, as they may deem necessary and proper for the commissioners appointed by the thirteenth section of this act, and to pay the same out of the funds of said bank.

Relative to loans.

§ 46. *Be it further enacted,* That when the said Union Bank shall have gone into operation, as provided for in the twelfth section of this act, the said bank shall not be required to loan on mortgages or stock, until the bonds specified in the fifth section of this act, shall have been sold, and the proceeds of sale be realized by said bank; but the said bank may loan, deal in exchange, discount, and take such securities as they shall deem proper, and on such time as the board of directors of said bank may prescribe: *Provided, however,* that the loans so to be made, shall be at the same rate of interest as prescribed in the thirty-eighth section

of this act: *And provided further*, That said loans may be made to any citizens of the state.

Reference to the next legislature.

§ 47. *Be it further enacted*, That the fifth section of this act, whereby the faith of this state is pledged for the payment and redemption of the loan contemplated by this act, be referred to the next legislature of this state, in pursuance of the ninth section of the seventh article of the constitution; and that this act be published, under the direction of the governor, in at least three newspapers of this state, for three months previous to the next regular election; and that this act, together with the yeas and nays thereon, be entered on the journals of the Senate and House of Representatives.

JNO. L. IRWIN,
Speaker of the House of Representatives.

A. G. MCNUTT,
President of the Senate.

Approved, so far as the action of this Legislature is recognized.

CHARLES LYNCH.

January 21, 1837.

JNO. W. KING,
Speaker of the House of Representatives.

A. L. BINGAMAN,
President of the Senate.

Approved, February 5, 1838.

A. G. MCNUTT.

Exhibit F.

AN ACT supplementary to an act to incorporate the subscribers to the Mississippi Union Bank.

The governor shall subscribe stock for the state.

§ 1. *Be it enacted by the Legislature of the State of Mississippi,* That as soon as the books of subscription for stock in the said Mississippi Union Bank are opened, the governor of this state is hereby authorized and required to subscribe for, in behalf of this state, fifty thousand shares of the stock of the original capital of the said bank; the same to be paid for out of the proceeds of the state bonds, to be executed to the said bank as already provided for in the said charter; and that the dividends and profits which may accrue and be declared by the bank on the said stock subscribed for in behalf of the state, shall be held by the said bank subject to the control of the state legislature for the purposes of internal improvement, and the promotion of education.

Commissioners to appraise property.

§ 2. *Be it further enacted,* That three commissioners be, and they are hereby appointed within each county in this state, viz: in the county of Adams, Wm. B. Howell, Henry L. Conner, and James Bisland; in the county of Amite, David Lee, Solomon Wethersby, and David Pemble; in the county of Attala, Nathan Sims, Samuel Little, and Isaiah Vick; in the county of Bolivar, Reddick Smith, Joseph T. Henderson, and Wm. B. Cook; in the county of Choctaw, Harrison L. Watts, Wm. Perry, and John Prewett; in the county of Copiah, Samuel T. Scott, L. W. Ellis, and Benjamin Grissom; in the county of Chicasaw, Henry W. Norton, Benjamin Kilgore, and David Griffin; in the county of Covington, John Watts, sen. Robert Magee, and Moses McLemore; in the county of Coahoma, George B. Warren,

David B. Allen, and Matthew Farrar; in the county of Carroll, Greenwood Leflore, James W. Eskridge, and John T. Brown; in the county of Clarke, Isham Evans, Alexander Trotter, and Edward Dease; in the county of De Soto, Gen. James Tate, Rev. Wm. McMahan, and Thomas W. Hancock; in the county of Franklin, George Holliway, James Hariton, and Charles Stewart; in the county of Green, Norman McLeoud, James Walley, and Thos. Baird; in the county of Holmes, John W. Cowen, Wm. Walton, and John M. Brown; in the county of Hinds, Perry King, Ira E. Williams, and Alexander McKay; in the county of Hancock, Julius Monett, George Holly, and Thomas Badson; in the county of Itawamba, Wm. Meadley, M. Green, and T. I. Foster; in the county of Jones, Angus Furguson, Cornelius Shaws, and Evan Elzy; in the county of Jasper, John M'Donald, Wm. Bridgers, and Doctor Dozier; in the county of Jefferson, Philip O. Hughes, Joseph Dunbar, and Neil Buie; in the county of Jackson, James F. Bradford, Andrew W. Ramsay, and Charles Holland; in the county of Kemper, Harrison Anderson, W. C. Taylor, and Alsa Pace; in the county of Lauderdale, Samuel Griffith, Peter Marsh, and B. F. Park; in the county of Lawrence, John H. Otis, John H. Hilliard, and Wm. Smith, sen.; in the county of Leake, Patrick Sharkey, Richard H. Walker, and Robert E. Halford; in the county of Lowndes, Geo. B. Watts, Eli Abbot, and Asa Sessions; in the county of Lafayette, James Stockard, Wm. Webb, and A. Peterson; in the county of Madison, Lewis Findley, Burress Haley, and Bennet R. Allen; in the county of Marion, Ebenezar Ford, Fleet Magee, and Wm. Graham; in the county of Monroe, Wm. A. Clunn,

Doctor Manly, and Washington Coopwood; in the county of Marshall, Wm. B. Means, Edward L. Travis, and James W. Briscoe; in the county of Noxubee, Charles W. Allen, Albert G. Haynes, and John H. Green; in the county of Neshoba, Jesse Clement, Shadrach Jones, and William Herbert; in the county of Newton, James Hudson, Dempsey Smith, and Thos. Runnels; in the county of Octibbeha, B. M. Moore, Elijah Hogan, and Asa Reid; in the county of Pike, James Y. McNabb, Nathaniel Wells, and Wm. Elzey; in the county of Perry, A. E. Denham, Wm. Griffin, and John Mixon; in the county of Pontotoc, Joel Pinson, John S. Doxey, and William Spencer; in the county of Ponola, E. Q. Vance, David Jones, and H. T. Pollard; in the county of Rankin, Rice Wells, Daniel Fore, and J. M. Sitler; in the county of Scott, John Dunn, jr., Edward Smith, and Stephen Berry; in the county of Simpson, Willis Walker, Martin Strickland, and Nathaniel Goff; in the county of Smith, Alexander Chisholm, David Ward, and E. D. Duckworth; in the county of Tippah, Robert Warren, Thomas Young, and Moses Collins; in the county of Tishemingo, T. G. Dabbins, James E. Matthews, and H. Mitchell; in the county of Warren, Henry S. Dawson, E. G. Cook, and Henry Fernandis; in the county of Washington, A. W. McAlister, W. E. Hall, and John S. Cox; in the county of Wayne, David Fletcher, Daniel E. McRae, and Thos. Poe; in the county of Wilkinson, John H. Randolph, Francis S. Mays, and Noland Stewart; in the county of Winston, Ares Hedspeth, John Coalter, and John Matthews; in the county of Yalobusha, James H. Barefield, Benjamin Williams, and Jeremiah Hendricks; in the county of Yazoo, I. W. Cassack, John Colglazer,

and Robert L. Adams; whose duty it shall be to ascertain and appraise the property of those who wish to become stockholders in the said Union Bank, as well as those who wish to obtain loans on mortgage, as provided for in the charter of the said bank, any two of whom shall be authorized to act; and in the event of death, inability or refusal to act on the part of any of the said commissioners, it shall be the duty of the managers or directors of the mother bank to fill any such vacancy by the appointment of others, on receiving information thereof from either of the commissioners, or from the president of the board of police of said county; and that the provisions of the thirteenth section of the charter of the Mississippi Union Bank, so far as relates to appointing appraisers for each bank district, be, and the same is hereby repealed.

Books of subscription for the mother bank.

§ 3. *Be it further enacted,* That the books of subscription for stock to the mother bank shall be opened at the seat of government, on giving at least thirty days previous notice in at least three newspapers published in this state, and shall be kept open during the space of six months by the managers appointed to open them; and the managers shall deposite all the titles, papers, notes and other documents in the said mother bank, duly authenticated and recorded as provided for in the charter; and the books for subscription for stock to the several branches shall be kept open for and during the space of one hundred and twenty days, by the managers appointed to open them in the several counties of this state, by giving thirty days previous notice of the same by advertisement posted up at at least three of the most public places in each of said counties, and at the

30 days notice to be given.

expiration of said time they shall transmit to the managers of the books of subscription of the stock so taken and secured, together with all the titles and other documents duly authenticated and recorded: *Provided,* That said books of subscription shall be opened in each county of this state on the same day.

Appraisers to take an oath.

§ 4. *Be it further enacted,* That the commissioners appointed to appraise the property of those who wish to become stockholders and obtain loans on mortgages, as well as the managers of the subscription books for the said bank, shall severally take and subscribe an oath faithfully to discharge their duty, before any person authorized to administer an oath in their respective counties.

Managers in the several counties to have forms.

§ 5. *Be it further enacted,* That the managers of the mother bank shall furnish the managers of the subscription books, in the several counties, the form of the mortgages and notes, with all other necessary forms for taking stock and securing titles to property mortgaged.

Transfers.

§ 6. *Be it further enacted,* That subscribers to the stock in the said Union Bank, or their legal representatives, may at any time transfer their respective shares to any citizen of this state, with the approbation of the directory of the mother bank, and that no person not a citizen of this state shall ever own any stock in this bank.

The issuing of bills.

§ 7. *Be it further enacted,* That the said bank shall never issue its own bills at any one time to an amount exceeding twice the amount of its capital actually paid in, and that the bills of this bank shall be signed by the president and countersigned by the cashier of the mother bank, and shall be

obligatory on the company according to the face of the same.

§ 8. *Be it further enacted,* That the resident citizens of the different districts shall be entitled to take the stock allotted to their respective districts: *Provided,* They may have taken it within one hundred and twenty days from the time of opening the said books, and after that period it may be taken by any citizen of this state; and that portion of the stock of the said Union Bank to be subscribed for on the part of the state, as provided for in the first section of this act, shall be taken from the whole amount of the capital stock of said bank, and the subscriptions to stock at the mother bank and several branches of said bank shall be so graduated as to reduce the amount of stock to be subscribed for by individuals in a just ratio proportionate to their capital; and that nothing in the charter of the said bank shall be so construed as to deprive the state of the amount of stock provided for in the first section of this supplemental act, and in no case shall this act be so construed as to allow more than five directors on the part of the state, as provided for in the original act.

Resident citizens.

Graduation of stock.

§ 9. *Be it further enacted,* That the president and directors of the said Mississippi Union Bank, or the managers thereof, shall have ample power to appoint three commissioners to negotiate and sell the state bonds, provided for in the fifth section of the act incorporating the subscribers to the Mississippi Union Bank, in any market within the United States, or in any foreign market, under such rules and regulations as may be adopted by said president and directors or managers, not in-

Power to appoint commissioners to sell bonds.

consistent with the provisions of the charter of said bank: *Provided*, Said bonds shall not be sold under their par value, and that said commissioners shall not accept of any commission or agency from any other banking or railroad company whatsoever, for the disposal of any bonds for the raising of money, or act as agents for the procuring of loans upon the pledge of real estate for the benefit of any other corporation.

Compensation of Commissioners.

§ 10. *Be it further enacted*, That the said commissioners shall, in compensation for their services, be paid out of the funds of said bank, and all expenses thereon be defrayed by the said bank.

Names of persons in each county, to superintend opening of books.

§ 11. *Be it further enacted*, That books of subscription for stock in the said bank, be opened in the county of Amite, under the superintendence of O. W. Calfield, in the place of William H. Dillingham; in the county of Adams, under the superintendence of Noah Barlow, Samuel Cotton and Dempsey P. Jackson; in the county of Bolivar, under the superintendence of Joseph McGuire, Christopher I. Field and Francis Patterson, jr.; in the county of Clarke, under the superintendence of Jackson A. Williford, John Towner and Wm. Covington; in the county of Chicasaw, under the superintendence of Wm. H. Williams, George W. Thornton and Wiley Griffin; in the county of Choctaw, under the superintendence of John Snow, R. F. Box and J. R. Golding; in the county of Coahoma, under the superintendence of Aaron Shelby, Wm. Richey and Wm. I. Oldham; in the county of Carroll, under the superintendence of T. S. Ayres, Wm. Y. Collins and John E. Palmer; in the county of De Soto, under the superintendence of John Warmick, Felix Labauve and Milton

Blocker; in the county of Holmes, under the superintendence of Arthur Hays, Robert Cook and Otho W. Beal; in the county of Hinds, under the superintendence of Richard S. Drone, Daniel Thomas and A. L. Dabney; in the county of Itawamba, under the superintendence of Edward Thomas, Duncan Clarke and Bazil Lindsey; in the county of Jefferson, under the superintendence of John M. Whitney, John R. Coleman and Charles T. Miles; in the county of Jones, under the superintendence of John Moffit, Duncan Thompson and Elisha Wade; in the county of Kemper, under the superintendence of Benjamin C. Oppitt, John F. Auld and ——— Latham; in the county of Lawrence, under the superintendence of Robert Jelks, Arthur Smith and Henry E. Calhoun; in the county of Leake, under the superintendence of Daniel Skinner, Thomas Myers and Jackson Warren; in the county of Lowndes, under the superintendence of John Davis, in place of J. A. Hogg, deceased; in the county of Monroe, under the superintendence of Nathan L. Morgan, John W. Cook and Josiah N. Walton; in the county of Madison, under the superintendence of Wm. Montgomery, Killis Walton and James Adams; in the county of Noxubee, under the superintendence of Richard D. Barker in place of Jas. T. Harrison, removed, and John L. Purdy in place of James Moore, deceased; in the county of Newton, under the superintendence of Pierce Redwine, A. G. Tase and Jacob Hallingworth; in the county of Neshoba, under the superintendence of Joseph Atkins, Henderson M. Walsh and William Rodgers; in the county of Octibbeha, under the superintendence of Robert A. Lampkins, John Billington and E. E. Clarke; in the county of Ponola,

under the superintendence of James Ruffin and Samuel Wright; in the county of Pike, under the superintendence of A. R. Green, Franklin Love and Thomas Denman; in the county of Pontotoc, under the superintendence of Benjamin M. Bradford, Samuel L. Watt and Charles W. Martin; in the county of Simpson, under the superintendence of Nathaniel Freeman, Joseph Boggan and Henry C. Bennet; in the county of Scott, under the superintendence of Shadrach J. Denson, Milton D. Young and Jonathan Russell; in the county of Tishemingo, under the superintendence of John Reaves, Thomas Pate and R. H. Bone; in the county of Tunica, under the superintendence of Andrew Kerr, John Bridges and James N. Smith; in the county of Tallahatchie, under the superintendence of James T. Crawford, Charles Bowen and James A. Girault; in the county of Wayne, under the superintendence of D. C. Shaw, John H. Horn and William Cohea; in the county of Warren, under the superintendence of William M. Pinkard, J. J. Chewning and Joseph Templeton; in the county of Yazoo, under the superintendence of Milton Piles, Robert C. Campbell, and Lineas B. Markham.

County of Newton.

§ 12. *Be it further enacted,* That the county of Newton is hereby attached to the first district.

Estimate of lands to be mortgaged.

§ 13. *Be it further enacted,* That in estimating plantations, the ratio of land unimproved shall not exceed the land in actual cultivation, or cleared land and ready for cultivation, in a greater proportion than ten acres of uncultivated land to one of cultivated or cleared land fit for cultivation; and that after a tract of land being composed of connected or contiguous parts, shall

exceed one thousand acres, then the ratio of uncultivated lands shall not, in such estimate, exceed five to one of the lands in one entire tract, susceptible of being cultivated: *Provided however*, That when the lands not in actual cultivation shall exceed the ratio above mentioned, the excess shall be considered as unimproved lands.

Branch at Ripley.

§ 14. *Be it further enacted*, That the branch of the Mississippi Union Bank for the third district, is hereby located at the town of Ripley, in the county of Tippah.

Ditto at Ponola.

§ 15. *Be it further enacted*, That the branch of the Union Bank for the fifth district, shall be located in the town of Polona, in the county of Ponola.

Repeal.

§ 16. *Be it further enacted*, That so much of the original charter of the Union Bank of the state of Mississippi, as conflicts with the provisions of this act, be and the same is hereby repealed.

Repeal.

§ 17. *Be it further enacted*, That so much of the fourteenth section of the charter of the Mississippi Union Bank as provides for the appointment of a provisional directory, be and the same is hereby repealed, and the ten managers elected by the provisions of the second section of the charter, shall compose the first or provisional directory, who shall be required to perform all the duties required of the said provisional directory in the original charter, and that the choice of a president for the said bank shall be confined to their own body, and the president and directory so appointed shall remain in office until they are superseded by the election of successors by the stockholders, and by the legislature, as provided for in the charter.

Repeal.

§ 18. *Be it further enacted*, That so much of the nineteenth section of the original charter as entitled the state to one-tenth of the whole profits of the bank, be repealed, and so much of the thirty-first section of the original charter as entitled the state to a credit of two hundred thousand dollars, be and the same is hereby repealed.

Advance to be made on stock.

§ 19. *Be it further enacted*, That the advance required to be made on the subscriptions for stock of said bank, as required in the eleventh section of the original charter, may be paid in by the subscribers in the current bills of the banks of undoubted solvency of this state, and that no more than two and a half per cent. on the stock shall be required to be paid at the time of subscribing: *Provided however*, That when this amount so advanced be refunded to the subscribers, as provided for in the forty-fourth section of the original charter, the same shall be in funds similar in value to the description of funds paid in by the subscribers.

§ 20. *And be it further enacted*, That if any stockholder should be dissatisfied with the graduation of the stock subscribed for by them, they may have the right to withdraw the property pledged, and cease to be stockholders, and the said stock so refused to be taken may be again subscribed for by giving thirty days public notice of the time of opening the books of subscription, which shall be governed by the same rules and regulations as in the first subscriptions.

Approved, February 15, 1838.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. ....., ORIGINAL. AT LAW.

THE PRINCIPALITY OF MONACO,
Plaintiff,

v.

THE STATE OF MISSISSIPPI,
Defendant.

BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO BRING THIS ACTION.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

THE PRINCIPALITY OF MONACO,
Plaintiff,

against

THE STATE OF MISSISSIPPI,
Defendant.

No.
Original.

BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO BRING THIS ACTION.

This is an application on behalf of The Principality of Monaco, a foreign State, for leave to bring an action at law in this Court against The State of Mississippi, one of the States of the United States, upon $100,000. face amount of bonds of the State of Mississippi payable to bearer and now the absolute property of The Principality of Monaco.

Statement.

The Declaration filed with the plaintiff's motion for leave to sue sets forth four causes of action:

(1) The first cause of action is based upon eight bonds of the face value of $1,000. each dated March 1, 1833, due

March 1, 1861, known as State of Mississippi Planters' Bank Bonds, 1833, with interest at the rate of six percent. per annum, payable half-yearly until payment of the said principal sum, issued under statutes of the State of Mississippi annexed to the Declaration.

(2) The second cause of action is based upon two bonds of the face value of $1,000. each dated March 1, 1833, due March 1, 1866, known as State of Mississippi Planters' Bank Bonds, 1833, with interest at the rate of six percent. per annum, payable half-yearly until payment of the said principal sum, issued under statutes of the State of Mississippi annexed to the Declaration.

(3) The third cause of action is based upon twenty bonds of the face value of $2,000. each dated June 7, 1838, due February 5, 1850, known as State of Mississippi Union Bank Bonds, 1838, with interest at the rate of five percent. per annum, payable half-yearly until payment of the said principal sum, issued under statutes of the State of Mississippi annexed to the Declaration.

(4) The fourth cause of action is based upon twenty-five bonds of the face value of $2,000. each dated June 6, 1838, due February 5, 1858, known as State of Mississippi Union Bank Bonds, 1838, with interest at the rate of five percent. per annum, payable half-yearly until payment of the said principal sum, issued under statutes of the State of Mississippi annexed to the Declaration.

The Bonds involved in the first and second causes of action are of the same issue, but vary in the number of coupons attached and the dates of maturity. The Bonds

involved in the third and fourth causes of action are of the same issue, but vary in the number of coupons attached and the dates of maturity.

Argument.

The jurisdiction of this Court is sought in this action by the plaintiff for the following reasons:

(1) The controversy is between a foreign State and a State of the United States.

(2) The Principality of Monaco as party plaintiff is the real party in interest.

(3) The causes of action are of a justiciable character of a civil nature, and the suit is instituted to enforce recovery of money due and owing to the plaintiff.

(4) This is not a suit to enforce a penalty under the laws of the plaintiff, and the matter in controversy does not call for a judgment on a political or governmental question.

Jurisdiction to entertain this action and render judgment is vested in the Supreme Court of the United States by the provisions of Article III, §2 of the United States Constitution:

> "The judicial power shall extend * * * to controversies * * * between a State * * * and foreign States."

The Constitution further provides as follows:

> "In all cases * * * in which a State shall be party, the Supreme Court shall have original jurisdiction."

The Eleventh Amendment to the Constitution does not affect this jurisdiction of the Supreme Court to hear and determine this action, as that Amendment provides only that:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

In addition to the express provision of the Constitution vesting original jurisdiction in the Supreme Court in cases such as the case at bar, this Court has fully upheld the right of foreign states and foreign sovereigns to bring actions in the United States courts.

> *Colombia* v. *Cauca Co.*, 190 U. S. 524;
> *Ex Parte Muir*, 254 U. S. 522.

In *The Ship Sapphire*, 11 Wall. 164, Mr. Justice Bradley, delivering the opinion of the Court, said in part, at pages 167 and 168:

> "The Constitution expressly extends the judicial power to controversies between a State, or citizens thereof, and foreign States, citizens or subjects, without reference to the subject-matter of the controversy. Our own government has largely availed itself of the like privilege to bring suits in the English courts in cases growing out of our late civil war. Twelve or more of such suits are enumerated in the brief of the appellee, brought within the last five years in the English law, chancery and admiralty

courts. There are numerous cases in the English reports in which suits of foreign sovereigns have been sustained, though it is held that a sovereign cannot be forced into court by suit."

In *Cohen* v. *Virginia*, 6 Wheat. 264, Chief Justice Marshall, considering the Eleventh Amendment, said, at p. 406:

> "It (the amendment) does not comprehend controversies between two or more States, or between a state and a foreign state. The jurisdiction of the court still extends to these cases: and in these a state may still be sued."

The Supreme Court, having jurisdiction, cannot refuse to exercise it.

See *Fisher* v. *Cockerell*, 5 Peters 248, at p. 259:

Marshall, C. J.:

> "As this Court has never grasped an ungranted jurisdiction, so will it never, we trust, shrink from the exercise of that which is conferred upon it."

Also *Minnesota* v. *Hitchcock*, 185 U. S. 373, 384.

Brewer, J.:

> "This Court cannot deny its jurisdiction in a case to which it is extended by the Constitution."

See also *The Steamer St. Lawrence*, 1 Black, 522, 526.

Taney, C. J.:

> "The Court could not, consistently with its duty, refuse to exercise a power with which it was clothed by the Constitution and laws."

The jurisdiction of this Court over the controversy involved in this suit is fully supported by the following cases:

United States v. *North Carolina*, 136 U. S. 211;
Virginia v. *West Virginia*, 220 U. S. 1; 238 U. S. 202; 241 U. S. 531;
South Dakota v. *North Carolina*, 192 U. S. 286.

The circumstances on which this case arises are similar to those arising in the case of *South Dakota* v. *North Carolina, supra*, except that in that case the action was in equity to foreclose the lien on certain security pledged as collateral for the bonds of the State of North Carolina, while the case at bar is an action at law to enforce the express obligation of the State of Mississippi to pay the principal and interest of the bonds sued on.

The form of the Declaration submitted with this application is modeled upon the Declaration filed by the Attorney General of the United States in the case of *United States* v. *North Carolina, supra*.

CONCLUSION.

The motion for leave to sue and to file the Declaration should be granted, and the Court should also make an order directing the issue and service of process pursuant to the usual procedure in original actions.

Respectfully submitted this 18th day of December, 1933.

Dean Emery and Ethelbert Warfield,
Attorneys for The Principality of Monaco.

Frederic R. Kellogg,
Frederic R. Coudert,
Howard Thayer Kingsbury,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

NO. ———— ORIGINAL

THE PRINCIPALITY OF MONACO, Plaintiff

VS.

THE STATE OF MISSISSIPPI, Defendant.

ANSWER TO RULE TO SHOW CAUSE

Complying with the order of this Court made and entered on January 8th, 1934, requiring the State of Mississippi to show cause on or before Monday, February 5th, 1934, why the motion of the Principality of Monaco for leave to file its declaration against the State of Mississippi should not be granted, the said State of Mississippi, by its Attorney General, would most respectfully show that said motion should be denied for the following reasons, to-wit:

I.

THE PRINCIPALITY OF MONACO IS NOT A "FOREIGN STATE" WITHIN THE MEANING OF SEC-

TION 2, ARTICLE III OF THE CONSTITUTION OF THE UNITED STATES, AND IS, THEREFORE, NOT AUTHORIZED TO BRING A SUIT AGAINST A STATE OF THE UNITED STATES.

II.

THE AUTHORITIES CITED BY COUNSEL FOR PLAINTIFF DO NOT SUPPORT THE CONTENTION THAT THIS COURT HAS JURISDICTION OF THIS CAUSE.

III.

THE STATE OF MISSISSIPPI HAS NOT CONSENTED AND DOES NOT CONSENT THAT SHE BE SUED BY THE PRINCIPALITY OF MONACO, AND WITHOUT SUCH CONSENT THE STATE CANNOT BE SUED.

IV.

THE CONSTITUTION OF THE UNITED STATES, BY SECTION 10, CLAUSE THIRD, ARTICLE I, FORBIDS THE STATE OF MISSISSIPPI, WITHOUT THE CONSENT OF CONGRESS, TO ENTER INTO ANY COMPACT OR AGREEMENT WITH THE PRINCIPALITY OF MONACO; AND NO COMPACT, AGREEMENT OR CONTRACT HAS BEEN ENTERED INTO BY THE STATE OF MISSISSIPPI WITH THE PRINCIPALITY OF MONACO.

V.

THE PROPOSED LITIGATION BY THE PRINCIPALITY OF MONACO UPON THE CAUSES OF AC-

TION STATED IN HER DECLARATION IS AN ATTEMPT BY HER TO EVADE THE PROHIBITIONS OF THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

VI.

THE DECLARATION OF THE PRINCIPALITY OF MONACO DOES NOT STATE A CONTROVERSY BETWEEN HER AND THE STATE OF MISSISSIPPI JUSTICIABLE UNDER THE CONSTITUTION OF THE UNITED STATES AND COGNIZABLE UNDER THE JURISDICTION OF THIS COURT.

VII.

THE ALLEGED RIGHT OF ACTION HAS LONG SINCE BEEN DEFEATED AND EXTINGUISHED BY REASON OF THE FOLLOWING FACTS APPEARING ON THE FACE OF THE DECLARATION, TO-WIT:

1. THE COMPLETION OF THE PERIOD OF LIMITATION OF ACTIONS AS PRESCRIBED BY THE STATUTES OF MISSISSIPPI.

2. PLAINTIFF AND ITS PREDECESSORS IN TITLE HAVE BEEN GUILTY OF LACHES.

3. THE RIGHT OF ACTION, IF ANY, IS NOW, AND HAS BEEN FOR A LONG TIME, STALE.

Wherefore, the State of Mississippi, by its Attorney General, prays the Court to deny said motion.

Respectfully submitted,

GREEK L. RICE, Attorney General,

W. W. PIERCE, Assistant Attorney General,

J. A. LAUDERDALE, Assistant Attorney General

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

NO. ———— ORIGINAL

THE PRINCIPALITY OF MONACO, Plaintiff

VS.

THE STATE OF MISSISSIPPI, Defendant.

BRIEF AND ARGUMENT ON ANSWER TO RULE TO SHOW CAUSE

STATEMENT

The declaration filed with the plaintiff's motion for leave to sue sets forth four causes of action:

(1) The first cause of action is based upon eight bonds of the face value of $1,000 each dated March 1, 1833, due March 1, 1861, known as State of Mississippi Planters' Bank Bonds, 1833, with interest at the rate of six per cent per annum, payable half-yearly until payment of the said principal sum, issued under statutes of the State of Mississippi annexed to the declaration.

(2) The second cause of action is based upon two bonds of the face value of $1,000 each dated March 1, 1833, due March 1, 1866, known as State of Mississippi Plant-

ers' Bank Bonds, 1833, with interest at the rate of six percent per annum, payable half-yearly until payment of the said principal sum, issued under statutes of the State of Mississippi annexed to the declaration.

(3) The third cause of action is based upon twenty bonds of the face value of $2,000 each dated June 7, 1838, due February 5, 1850, known as State of Mississippi Union Bank Bonds, 1838, with interest at the rate of five percent per annum, payable half-yearly until payment of the said principal sum, issued under statutes of the State of Mississippi annexed to the declaration.

(4) The fourth cause of action is based upon twenty-five bonds of the face value of $2,000 each dated June 6, 1838, due Feb. 5, 1858, known as State of Mississippi Union Bank Bonds, 1838, with interest at the rate of five percent per annum, payable half-yearly until payment of the said principal sum, issued under statutes of the State of Mississippi annexed to the declaration.

The bonds involved in the first and second causes of action are of the same issue, but vary in the number of coupons attached and the dates of maturity. The Bonds involved in the third and fourth causes of action are of the same issue, but vary in the number of coupons attached and the dates of maturity.

The bonds in controversy were donated by certain persons residing in England and in the City of New York, State of New York, to the Principality of Monaco on or about the 26th day of September, 1933.

The declaration alleges that the bonds have not been paid and that no interest has been paid since 1840.

I.

THE PRINCIPALITY OF MONACO IS NOT A "FOREIGN STATE" WITHIN THE MEANING OF SECTION 2, ARTICLE III OF THE CONSTITUTION OF THE UNITED STATES, AND IS, THEREFORE, NOT AUTHORIZED TO BRING A SUIT AGAINST A STATE OF THE UNITED STATES.

The term "foreign state" as used in said Section 2, Article III of the Constitution of the United States means an independent sovereign, a nation or a country, and it does not mean a government who has surrendered its sovereignty to another nation or country or foreign state.

This Court will take judicial knowledge of the status of plaintiff in this case; that is, whether or not it is a sovereign country or foreign nation, or whether it has surrendered its sovereignty to France.

In *Ennis vs. Smith*, 14 How. (U. S.) 400, this Court held:

> "Lithuania, we know to be now a Russian Province governed by its own laws except as they may be modified by the Emporer's edict."

In *U. S. vs. Wagner*, 2 Ch. 585, this Court held:

> "The court is bound to take judicial notice of the existence and of the title of the United States

of America as a sovereign power, and also that the name by which the plaintiff sued is the correct and appropriate designation."

"Courts take judicial notice of the organization of the Dominion of Canada." *Ex Parte Lane,* 6 Fed. 34. *Lumley vs. Wabash R. R. Co.,* 71 Fed. 21.

"That the Island of Cuba is a dependency of the Kingdom of Spain and subject to its government are facts to be judicially noticed by the Court."

People vs. D'Argencour, 32 Hun. (N. Y.) 178; affirmed: 95 N. Y. 624. This case was decided prior to the war with Spain in 1898.

The relation between France and the plaintiff in this case is controlled or fixed by an agreement known as the Treaty of July 17th, 1918. See Appendix 1, page 87, for a copy thereof.

In Article I of this Treaty, Monaco undertakes "to exercise its rights of sovereignty entirely in accord with the political, military, naval and economic interest of France." The plaintiff is exercising "its rights of sovereignty" in this case in that the right to sue depends upon the sovereignty of the plaintiff. A country or a power certainly could not be called a sovereignty when it has agreed by solemn treaty to exercise all of its sovereignty in accord with the interest of a foreign country.

Article II of said Treaty provides that "measures con-

cerning the international relations of the Principality shall always form the subject of a prior understanding between the princely government and the French government." This, of course, gives France the entire control over the international relations of the plaintiff in this case, and under this provision it was necessary for the plaintiff to obtain the consent of France in order to bring this suit.

By the second paragraph of Article II, France exercised supervision and control over the Governors or Rulers of the plaintiff.

In the second paragraph of Article III, it is provided:

> "In the event of the Crown falling vacant, * * * the territory of Monaco shall form, under the protectorate of France, an autonomous State called the State of Monaco."

If the present Principality of Monaco is a sovereignty, why does it agree at some future time, upon a certain contingency, that it may organize an independent government. If sovereign, why could it not organize such government at any time?

Article IV provides that the French Government may, with or without the consent of the Prince of Monaco, "cause to enter and remain in the territory and territorial waters of the Principality the military or naval forces" of France.

Article VI of said Treaty gives France general juris-

diction over all crimes and misdemeanors, "the organization of common public services, education, the recruitment of public officials, the status of foreigners, * * * * the supervision of frontiers."

Under this provision France has general supervision or control of all public officials, all public service and education.

It appears clearly from the provisions of this Treaty that the Principality of Monaco has surrendered all its sovereignty to the Government of France, and it cannot now be considered a "foreign state" as this term is used in the Constitution of the United States, and it, therefore, is not authorized by said Constitution to bring this suit.

Under the terms of the treaty, the Principality of Monaco has no sovereignty which it may exercise in its own behalf. Therefore, it has no attributes of sovereignty and is entirely and wholly under the control and dominion of France.

A State of the United States has more freedom, more independence and a greater degree of sovereignty than does the principality. Yes, even a municipality of this State has more sovereignty than the so-called Principality. It may at least elect its municipal officers without let or hindrance from any other power. The alleged "foreign state" cannot do this. At all times it is subject to the will of France. Not only its foreign relations and its internal affairs are under the control of France but it is even dependent upon France for its form of government.

II.

THE AUTHORITIES CITED BY COUNSEL FOR PLAINTIFF DO NOT SUPPORT THE CONTENTION THAT THIS COURT HAS JURISDICTION OF THIS CAUSE.

Columbia v. Cauca Company, 190 U. S. 524. This case was an appeal by the Republic of Columbia from a decree of the Circuit Court of Appeals. The question before this Court in that case was whether or not it had jurisdiction of the cause on appeal. The Court held as follows:

> "We see no reason to doubt that Congress was as well aware of the distinction between foreign states and foreign citizens when it passed the Act of 1891 as when it passed the Act of 1888, and that when it spoke of aliens it meant foreign citizens alone. We are confident that it did not dream of excluding sovereign powers that choose to sue here from the right to appeal. The word 'aliens' could be given that effect only by straining it beyond its natural meaning and away from the indication of the context."

Ex parte Muir, 254 U. S. 522. The question of jurisdiction was not raised in this Court. The Court simply held that it would not judicially know that a privately owned vessel was under the control of the British Government. It was an action in rem and not for a money judgment.

The Ship Sapphire, 11 Wall. 164. This was a suit by the French Emperor, Napoleon, against a citizen of the

State of California, begun in the Circuit Court of the United States, for the District of California. It was not a case where a foreign country was attempting to sue a state of the United States. The decision there has no application to the case at bar. This was also an action in rem and not for a money judgment merely.

Each of above cases were against individuals and an execution could issue.

Cohen vs. Virginia, 6 Wheat. 264. This was a case where one of the parties was the State of Virginia and the other a citizen of the State of Virginia. It was appealed to this Court from the highest court of the State of Virginia. There is no question but what this Court had jurisdiction in that case.

U. S. V. North Carolina, 136 U. S. 211. This was a case of original jurisdiction in this Court by the United States against North Carolina. The question of jurisdiction of this Court was not raised nor expressly decided.

It is true that in the case of *South Dakota v. North Carolina,* 192 U. S. text page 316, a majority of this Court held:

> "It is true that no question was made as to the jurisdiction of this Court, and nothing was, therefore, said in the opinion upon that subject, but it did not escape the attention of the Court and a judgment would not have been rendered except upon the theory that this Court had orig-

inal jurisdiction of a suit by the United States against a State."

Questions not raised and not decided by this Court would, at least, not be positive authority.

In the recent case of *Interstate Natural Gas Co. vs. State Tax Commission*, 284 U. S. 41, the plaintiff attempted to enjoin the authorities of the State of Mississippi from the collection of a privilege tax. The case was appealed to this Court and decided by it on its merits. At the same term the case of *Matthews v. Rodgers*, 284 U. S. 521, was decided. This suit was also an attempt by the plaintiff to enjoin the officials of Mississippi from collecting a privilege tax. Each plaintiff made practically the same allegations in reference to the equitable jurisdiction of this Court. The question of jurisdiction was raised in the last mentioned case, and this Court held that it had no jurisdiction.

It appears, however, that in the case of *United States vs. North Carolina* that each of the parties was willing to follow the law, but they were not certain as to what the law was, and the question was submitted by agreement to this Court without any question as to jurisdiction.

Virginia vs. West Virginia, 220 U. S. 1, 238 U. S. 202, 241 U. S. 531. It appears from this case that when the State of West Virginia was created out of a part of the State of Virginia that the two states had certain agreements in reference to the bonded indebtedness outstanding at the time of the separation. This suit was brought to determine the amount due by West Virginia to Virginia. In determining the question of jurisdiction, this Court held as follows:

"The case is to be considered in the untechnical spirit proper for dealing with a quasi international controversy, remembering that there is no municipal code governing the matter and that this Court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the Legislature of the State alone." Citing cases. The Court further held:

"As this is no ordinary commercial suit, but as we have stated, a quasi international difference, referred to this Court in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies."

The suit at bar is not a quasi international difference, but simply a commercial suit on an assigned contract. The agreement in controversy in the decided case was an agreement between the States of West Virginia and Virginia made by and with the consent of Congress.

South Dakota v. North Carolina, 192 U. S. 286. Certain bonds issued by the State of North Carolina were donated by the holders thereof to the State of South Dakota. The stock of a railroad company in North Carolina was pledged as security for the payment of the bonds. South Dakota filed a suit praying for a decree authorizing the sale of the security and for decree over on the bonds.

The case was decided by a divided Court, five of the judges holding that this Court had jurisdiction, and four of the Judges holding that it had no jurisdiction. However, the majority opinion expressly and unequivocally pre-

termitted the question as to whether or not this Court had jurisdiction where one state was attempting to sue another state for a money judgment alone. The minority opinion, concurred in by four of the Judges, expressly and unequivocally held that this Court had no jurisdiction in such case. At least, the judgment of the four Judges is persuasive when the other five Judges refused to decide the question. The majority opinion held as follows:

> "We have, then, on the one hand the general language of the Constitution, vesting jurisdiction in this court over 'controversies between two or more states,' the history of that jurisdictional clause in the convention, the cases of *Chisholm v. Georgia, United States v. North Carolina,* and *United States v. Michigan* (in which this court sustained jurisdiction over actions to recover money from a state), the manifest trend of other decisions, the necessity of some way of ending controversies between states, and the fact that this claim for the payment of money is one justiciable in its nature; on the other, certain expression of individual opinions of justices of this court, the difficulty of enforcing a judgment for money against a state by reason of its ordinary lack of private property subject to seizure upon execution, and the absolute inability of a court to compel a levy of taxes by the legislature. Notwithstanding the embarrassments which surround the question, it is directly presented, and may have to be determined before the case is finally concluded, but for the present it is sufficient to state the question with its difficulties.

"There is in this case a mortgage of property, and the sale of that property under a foreclosure may satisfy the plaintiff's claim. If that should be the result, there would be no necessity for a personal judgment against the state. That the state is a necessary party to the foreclosure of the mortgage was settled by *Christian v. Atlantic & N. C. R. Co.*, 133 U. S. 233, 33 L. ed. 589, 10 Sup. Ct. Rep. 260. Equity is satisfied by a decree and a foreclosure and sale of the mortgaged property, *leaving the question of a judgment over for any deficiency to be determined when, if ever, it arises.*"

In *United States v. Michigan*, 190 U. S. 379, Cited in the above quotation it appears that the United States had permitted the State of Michigan to sell certain public lands and to use the proceeds thereof for constructing a canal. The proceeds of the lands were kept in a special fund. The canal was completed and said funds were on hand in said special fund and the machinery, equipment, etc., used in constructing the said canal was in the custody of the State of Michigan.

This suit was to recover the trust fund, machinery, equipment, etc. It was not a case wherein a judgment for money against a state was required.

The minority in an opinion rendered by Judge White, in the *North Dakota vs. South Carolina* case, held that there was "absolute want of power in the Court to render a decree between the two states on the cause of action sued on."

I will not attempt to re-state the arguments made and the authorities cited by Judge White in support of the contention of the majority of the Court, but most respectfully call the Court's attention to this dissenting opinion, in which the contention of the State of Mississippi is fully sustained, and the holding of the dissenting opinion insofar as it relates to the facts in this case, is not controverted by the majority of the Court.

In the main opinion in the *South Dakota vs. North Carolina* case the majority opinion holds as follows:

> "But we are confronted with the contention that there is no power in this court to enforce such a judgment, and such lack of power is conclusive evidence that, notwithstanding the general language of the Constitution, there is an implied exception of actions brought to recover money. The public property held by any municipality, city, county or state is exempt from seizure upon execution, because it is held by such corporation, not as a part of its private assets, but as a trustee for public purposes. (*Meriwether vs. Garrett*, 102 U. S. 472, 513, 26 L. ed. 197.) As a rule, no such municipality has any private property subject to be taken upon execution. A levy of taxes is not within the scope of judicial power except as it commands an inferior municipality to execute the power granted by the legislature.
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> "In *Reese vs. Watertown*, 19 Wall 107, 116 117, 22 L. ed. 72, 75, we said:
>
> " 'We are of the opinion that this court has not the power to direct a tax to be levied for the

payment of these judgments. This power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only; and, second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. Especially is it beyond the power of the Federal judiciary to assume the place of a state in the exercise of this authority, at once so delicate and so important.'

"See also *Heine vs. Levee Commrs.*, 19 Wall 655, 661, 22 L. ed., 223, 226; *Meriwether vs. Garrett*, 102 U. S. 472, 26 L. Ed. 197.

"In this connection reference may be made to United State ex rel. *Goodrich vs. Guthrie*, 17 How. 284, 15 L. ed. 102, in which an application was made for a mandamus against the Secretary of the Treasury to compel the payment of an official salary. * * * * * *
(The court holding that mandamus would not lie against the President of the United States to compel him to pay the salary of a Federal Judge)
* * * * * * * *

"Further, in this connection may be noticed *Gordon vs. United States*, 117 U. S. 697, in which this court declined to take jurisdiction of an appeal from the court of claims, under the statute as it stood at the time of the decision, on the ground that there was not vested by the Act of Congress power to enforce its judgment. We quote the following from the opinion, which was the last prepared by Chief Justice Taney (pp. 702, 704):

> " 'The award of execution is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative, and nugatory, leaving the aggrieved party without a remedy. . . . Indeed, no principle of constitutional law has been more firmly established or constantly adhered to than the one above stated,—that is, that this court has no jurisdiction in any case where it cannot render judgment in the legal sense of the term; and when it depends upon the legislature to carry its opinion into effect or, not, at the pleasure of Congress.' See also *Re Sanborn*, 148 U. S. 222, 37 L. ed. 429, 13 Sup Ct. Rep. 577, and *La Abra Silver Min. Co. vs. United States*, 175 U. S. 423, 456, 44 L. ed. 223, 235, 20 Sup. Ct. Rep. 168."

The court cited and seemingly approved all of the decisions which it reviewed. The minority opinion very clearly and emphatically approves this part of the opinion of the majority.

While it is clear that the court did not hold in this case that this court had jurisdiction to grant a money judgment against a sovereign state, there are several very material differences between the case at bar and the case there decided. Some of the differences are as follows:

1. This is a suit at law, not an action of debt and not an action in equity to foreclose a lien.

2. The North Carolina bonds were delivered to the

donee prior to the maturity thereof. The statute of limitations, laches, etc., were not involved.

3. The bonds in controversy here were delivered to plaintiff more than fifty-seven years after the state, acting in its sovereign capacity, by constitutional amendment had prohibited their payment by the state.

4. This court cannot coerce the payment of the bonds without violating the constitutional provisions of a sovereign state. These provisions have been in effect, without being controverted in any court, for a period of more than fifty seven years.

5. If the principality of Monaco is a foreign state, then said decision would not apply to the bonds in this case.

6. If the principality of Monaco is not a foreign state, wtihin the meaning of the Constitution of the United States, then it has no right to bring this action.

7. The question of the violation of Section 10, Clause 3, Article 1 of the United States Constitution was not raised in said case.

It, therefore, clearly appears that none of the authorities cited by counsel for plaintiff support their contention, but, on the contrary, support the contention of the State of Mississippi that it is not liable to suit in this court by the Principality of Monaco.

III.

THE STATE OF MISSISSIPPI HAS NOT CONSENTED AND DOES NOT CONSENT THAT SHE BE SUED BY THE PRINCIPALITY OF MONACO, AND WITHOUT SUCH CONSENT THE STATE CANNOT BE SUED.

The Principality of Monaco was not, nor was any foreign power, a party to the compact of the States in the Constitution of the United States. The great instrument was the compact solely and exclusively between the States of the United States and their people. No foreign power assumed any of the burdens or obligations imposed by that great compact of the sovereign states; it imposed no duties upon any foreign power; it conferred no rights upon any foreign nation. No foreign power is bound in any wise by the compact of the Constitution; it was not created nor constructed nor adopted for the benefit of any foregn power, but solely "in order to form a more perfect union, establish justice, insure domestic tranquility, provide for a common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." The several states to compose the United States under the Constitution alone ratified it or accepted it by admission to the Union.

In *United States v. Dickelman*, 92 U. S. 520, 524, the Court said:

> "One nation treats with the citizens of another only through their government. A sovereign cannot be sued in his own courts without his consent. His own dignity, as well as the dignity of

the nation he represents, prevents his appearance to answer a suit against him in the courts of another sovereignty, except in performance of his obligations, by treaty, or otherwise, voluntarily assumed. Hence a citizen of one nation wronged by the conduct of another nation, must seek redress through his own government. His sovereign must assume the responsibility of presenting his claim, or it need not be considered. If this responsibility is assumed the claim may be prosecuted as one nation proceeds against another, not by suit in the courts, as of right, but by diplomacy, or, if need be, by war. It rests with the sovereign against whom the demand is made to determine for himself what he will do in respect to it. He may pay, or reject it; he may submit to arbitration, open his own courts to suit, or consent to be tried in the courts of another nation. All depends upon himself."

Briscoe v. Bank of Kentucky, 11 Pet. 257.
Cohens v. Virginia, 6 Wheat. 264.
Hamilton, Federalist, No. 80.

In 3 Elliott's Debates, p. 533, Mr. Madison said:

"I do not conceive that any controversy can ever be decided, in these courts, between an American State and a foreign state, without the consent of the parties. If they consent, provision is here made. The disputes ought to be tried by the National tribunal. This is consonant to the law of nations."

In 3 Elliott's Debates, pp. 555,556, Mr. Marshall said:

> "I hope that no gentleman will think that a State will be called at the bar of the Federal Court. Is there no such case at present? Are there not many cases in which the Legislature of Virginia is a party, and yet the State is not sued? It is not rational to suppose that the sovereign power should be dragged before a court."

There seems no doubt that suits against states for the collection of debts were unheard of at the time of the adoption of the Constitution, and it would seem that the power to bring such actions would have been denied as promptly as the right of a citizen to sue the State was denied by the adoption of the Eleventh Amendment.

In *Beers v. State of Arkansas*, 20 How. 527, Mr. Chief Justice Taney, speaking for the Court said:

> "It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper waive this privilege, and permit itself to be made defendant in a suit by individuals or by another state. And as this permission is altogether voluntary on the part of the sovereignty, it follows that it may prescribe the terms and conditions on which it consents to be sued and the manner in which the suit shall be conducted, and may withdraw its consent whenever it may suppose that justice to the public requires it."

Clark v. Barnard, 108 U. S., 436.

Likewise, this Court held in *Bank of Washington v. Arkansas*, 20 How. 530, Mr. Chief Justice Taney again speaking for the Court:

> "Those who deal in the bonds and obligations of a sovereign state are aware that they must rely altogether on the sense of justice and good faith of the State; and that the judiciary of the State cannot interfere to enforce these contracts without the consent of the State, and the courts of the United States are expressly prohibited from exercising such jurisdiction."

Mr. Webster in his opinion given to Varning Bros. & Co., October 16th, 1839, Volume 6, p. 537, said:

> "The security for state loans is the plighted faith of the State as a political community. It rests on the same basis as other contracts with established governments, the same basis, for example, as loans made by the United States under the authority of Congress; that is to say, the good faith of the Government making the loan, and its ability to fulfill its engagements."

In *Crouch v. Credit Fancier*, 8 Court of Q. B., 374, Mr. Justice Blackman said:

> "Foreign and colonial governments frequently create a public debt, the title to portions of which is made to depend on the possession of bonds expressed to be payable to the bearer or holders. There can hardly be said properly to be any right of action on such instruments at all,

though the holder has a claim on the government."

Hamilton in his Report in 1795, Annals of Congress, 1793-95, Third Congress, p. 1635, said:

> "Public debt can scarcely, in legal phrase, be defined either as property in possession or in action. It is evidently not the first until it is reduced to possession by payment. To be the second, would suppose a legal power to compel payment by suit. Does such a power exist? The true definition is, such a property subsisting in the faith of the government. Its essence is promise. Its definite value depends upon the reliance that the promise will be definitely fulfilled."

In *Hans v. Louisiana*, 134 U. S. 1, Mr. Justice Bradley, speaking for the Court, said:

> "The suability of a state without its consent was a thing unknown to the law. This has been so often laid down and acknowledged by courts and jurists that it is hardly necessary to be formally asserted. It was fully shown by an exhaustive examination of the old law by Mr. Justice Iredell, in his opinion in *Chisholm v. Georgia;* and it has been conceded in every case since, where the question has, in any way, been presented, even in the cases which have gone farthest in sustaining suits against the officers or agents of states.
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> *Osborne v. Banks of United States*, 9 Wheat. 738.

Davis vs. Gray, 16 Wall. 203.
Board of Liquidation v. McComb, 92 U. S. 53.
United States v. Lee, 106 U. S. 196.
Virginia Coupon Cases, 114 U. S. 269.

"In all these cases the effort was to show, and the Court held, that the suits were not against the State or the United States, but against individuals; conceding that if they had been against either the state or the United States they could not be maintained."

In this opinion the Court further said:

"To avoid misapprehension it may be proper to add that, although the obligations of a State rest for their performance upon its honor and good faith, and cannot be made the subjects of judicial cognizance unless the State consents to be sued, or comes itself into court, yet where property or rights are enjoyed under a grant or contract made by a State, they cannot wantonly be invaded. Whilst the State cannot be compelled by suit to perform its contract, any attempt on its part to violate property or rights acquired under its contracts may be judicially resisted; and any law impairing the obligation of contracts under which such property or rights are held is void and powerless to affect their employment."

We deem it not required in opposing this motion to discuss the question whether the Constitution is a compact between sovereign states or a compact by the sovereign people of sovereign states in the plentitude of their power;

to form a more perfect union, and to establish the supreme law for their control and observance, for it is undeniable that no foreign power was a party to the compact, nor the citizen or subject of any foreign nation. We cannot conceive that a foreign power can, as a matter of right, maintain any privilege or right under that compact.

Chisholm v. Georga, 2 Dall. 419 (Opinion of Chief Justice Jay, 741).

Rhode Island v. Massachusetts, 12 Pet. 657 (Opinion of Justice Baldwin, p. 720).

Worcester v. Georgia, 6 Pet. 515 (Opinion of Justice McLean, p. 569).

Martin v. Hunter, 1 Wheat. 304 (Opinion of Justice Story, 524, 525).

1 Story's Com. on the Constitution, chap. III.

In the cases of *United States v. Texas,* 143 U. S. 646, and *Rhode Island v. Massachusetts,* 12 Pet. 657, this Court held that it had original jurisdiction in cases where a state was a party by virtue of the Constitution, and that the consent of the state was unnecessary. However, Monaco was not a party to the Constitutiton of the United States, and it received no privileges therefrom, and, further, it is not shown that Monaco gives the State of Mississippi the privilege to sue in its courts.

Even though the Eleventh amendment had not been adopted, the original clause in the Constitution extending

judicial power of the Federal Government to controversies between the states of the Union and foreign powers did not contemplate that a foreign government could maintain an action in a court against a State of this Union to enforce the payment of a bond floated by such state without the consent of the State.

When this clause was written no such action was known to judicial power. The whole world of jurisprudence conceded and asserted that the king—the government—was immune from the processes of the courts at the instance of subjects or aliens. The wayfaring man understood that if he loaned money to the Government his sole security was the good faith of the government. A suit in court by an individual against a government, without its consent, to enforce the payment of a debt was unheard of; a suit in court by one sovereign power against another to enforce the payment of a debt was undreamed of. No European power was more jealous of its sovereignty than were the States of this Union at the time the Constitution was written. No more startling proposition could have been submitted to the fathers assembled at Philadelphia than one to clothe a foreign power with the right to sue the state for debt without its consent. The whole history of the colonies and of the States shows that such a proposition would have been refuted instantly and with indignation. Every light and shade in the history of the Commonwealth of Massachusetts, the temper of her great leaders, the whole course and color of her civilization show with mathematical certainty that if the proposition now urged had been presented, Massachusetts would have thrown it

overboard as promptly as she dumped tea that she did not like into Boston harbor.

It is inconceivable to a mind acquainted with the elementary facts of history that the framers of the Constitution intended to clothe, not to say conceal, an innovation so radical in the few simple words of the Constitution. Hamilton could not conceive it. Impressed as he was with the necessity for a strong central government, he could not understand how any one could think the Constitution was capable of the construction that the sovereign state could be sued for debt without its consent. He voiced this conviction in his speech before the New York convention when the Constitution was before that body for adoption or rejection. He then said:

> "It has been suggested that an assignment of the public securities of one state to the citizens of another would enable them to prosecute that state in the Federal Courts for the amount of those securities—a suggestion which the following considerations prove to be without foundation. It is inherent in the nature of sovereignty not to be amenable to the suit of an individual, without its consent. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every state in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the Convention it will remain with the States, and the danger intimated must be merely ideal; the circumstances which are necessary to produce an alienation of State sovereignty were discussed in considering the ar-

ticle on taxation, and need not be repeated here. A recurrence to the principles there established will satisfy us that there is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding in the conscience of the sovereign, and have no pretentions to a compulsive force. They confer no right of action independent of the sovereign will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident it could not be done without waging war against the contracting State; and to ascribe to the Federal courts by mere implications, and in distraction of a pre-existing right of State Government, a power which would involve such a consequence would be altogether forced and unwarrantable."

These were the views of Hamilton when he was urging the people to accept the work of the Philadelphia Convention. Later, in 1795, when he was Washington's Secretary of the Treasury, he reiterated these convictions. In his annual report for that year he said:

"Public debt can scarcely in legal phrase be defined either as property in possession or in action. It is evidently not the first until it is reduced to possession by payment. To be the second, would suppose a legal power to compel the payment by suit. Does such a power exist? The true definition is, such a property subsisting in

> the faith of the Government. Its essence is promise. Its definite value depends upon the reliance that the promise will be definitely fulfilled."

Precisely the same views were expressed by Madison and Marshall in the Virginia Convention, in answer to the criticisms of Patrick Henry and George Mason. Mr. Madison said:

> "I do not conceive that any controversy can ever be decided, in these courts between an American State and a foreign state, without the consent of the parties. If they consent, provision is here made. The disputes ought to be tried by the National tribunal. This is consonant to the law of nations." (In 3 Elliott's Debates, p. 533).

Any departure from this interpretation will inevitably produce a brood no man can number of the very controversies the designers of the Constitution endeavored to prevent.

This interpretation placed upon the Constitution by Madison and Hamilton, two of its ablest champions, and by Marshall, its first great interpreter, has been acquiesced in by the whole world by a century and a half of inaction. It is a wise and salutary principle that when an alleged power under a statute has never been invoked through a long period of years a presumption arises that no such power was ever conferred. and this rule is intensified in this case by the fact that Hamilton, Marshall and Madison, from the beginning unequivocally denied the existence of any such power.

The proposition that a foreign state cannot sue a state of the Union without its consent finds support in the consideration that a binding jurisdiction ought to be binding on both parties to the controversy. None will say that this Court is clothed with any power to call the Principality of Monaco before it. It is equally without power to enforce any judgment of any sort against the Principality of Monaco. As to Monaco, this Court must at every stage of the case act only as a court of arbitration, without power to enforce its judgment. Such a status forces the conclusion that Madison, Marshall and Hamilton were correct in declaring that only when the State consents to it can it be sued by a foreign power.

It is elementary and aximatic that the law ought not to be interpreted in disjointed sections, but that every part should be studied in the light of the whole. Now, if we take Article I, Section 10, and Article III, Section 2, of the Constitution and read them together, and in the order in which they are written in the Constitution, we will have this:

> "No state shall enter into any treaty or alliance with any foreign power, and no state without the cosent of Congress shall make any agreement or compact with any foreign state, and the judicial power shall extend to controversies between a state and a foreign power."

Clearly, the first clause modifies the second, and it is just as plain that it was not intended for the judicial power to extend to controversies growing out of relations forbidden by the first clause. The controversies must not be

made, they must be born; they can neither be bought nor borrowed, but they must be original controversies growing out of the necessary relations of a state and a foreign government while each is in the exercise of its sovereign power, or out of agreements entered into by and with the consent of Congress. Read and interpreted in this way, the judicial power is given its full scope, and at the same time the inhibition of the Constitution against all bargains and agreements between a State and foreign governments is fully observed.

IV.

THE CONSTITUTION OF THE UNITED STATES, BY SECTION 10, CLAUSE THIRD, ARTICLE I, FORBIDS THE STATE OF MISSISSIPPI, WITHOUT THE CONSENT OF CONGRESS, TO ENTER INTO ANY COMPACT OR AGREEMENT WITH THE PRINCIPALITY OF MONACO; AND NO COMPACT, AGREEMENT OR CONTRACT HAS BEEN ENTERED INTO BY THE STATE OF MISSISSIPPI WITH THE PRINCIPALITY OF MONACO.

When the men who conceived and constructed the framework of this Government came to consider the subject of controversies between the states and foreign powers, they had a vivid appreciation of the menace to the peace and safety of the Nation such controversies would involve. Therefore, in the very first article of the Constitution they took steps to exclude, so far as human foresight could exclude, the possibility of such controversies arising. Hence it is written that under no circumstances may a State enter into any alliance or treaty with a foreign

power, and that no State may make any compact or agreement with a foreign power without the consent of Congress. The reasoning was that if the States were not permitted to bargain, contract, deal or dicker with foreign governments, the most prolific source of controversies would be entirely eliminated. The reasoning finds its justification in the fact one hundred and forty-six years have elapsed since this inhibition was made a part of our organic law, and now for the first time a foreign government knocks at the door of this Court, and alleges that a controversy has arisen between it and a State of this Union.

This clause of the Constitution reads:

> "No state shall, without the consent of Congress * * * * enter into any agreement or compact with another state, or with a foreign power."

In *Green v. Biddle* (1823), 8 Wheat. 1, this Court said:

> "Let it be observed, in the first place, that the Constitution makes no provision respecting the mode or form in which the consent of Congress is to be signified, very properly leaving that matter to the wisdom of that body, to be decided upon according to the ordinary rules of law and of right reason. The only question in cases which involve that point is, has Congress, by some positive act in relation to such agreement, signified the consent of that body to its validity?"

In that case the Court held that the act of the State of Virginia agreeing to the erection of Kentucky into a

State and prescribing the terms and conditions, and the acceptance by the people of Kentucky, and their approval in their Constitution of these terms and conditions, created a compact between those States valid and binding upon the consent of Congress.

In *Poole v. Fleeger*, 11 Pet. 185, this Court again held that the agreement between two states, Tennessee and Kentucky, as to State boundary, was a compact that required the consent of the Congress for its validity. In neither of these cases did the Court define the meaning of the words "compact" and "agreement," as used in this clause, but in *Holmes v. Jennison*, 14 Pet. 540, Mr. Chief Justice Taney, in his opinion, concurred in by Messrs. Justice Storey, McLean and Wayne, said:

> "But the question does not rest upon the prohibition to enter into a treaty. In the very next clause of the Constitution the States are forbidden to enter into any 'agreement' or 'compact' with a foreign nation; and as these words could not have been idly or superfluously used by the framers of the Constitution, they cannot be construed to mean the same thing with the word treaty. They evidently mean something more, and were designed to make the prohibition more comprehensive. A few extracts from an eminent writer on the laws of nations, showing the manner in which these different words have been used, and the different meanings sometimes attached to them, will perhaps, contribute to explain the reason for using them all in the Constitution; and will prove that the most comprehensive terms

power, and that no State may make any compact or agreement with a foreign power without the consent of Congress. The reasoning was that if the States were not permitted to bargain, contract, deal or dicker with foreign governments, the most prolific source of controversies would be entirely eliminated. The reasoning finds its justification in the fact one hundred and forty-six years have elapsed since this inhibition was made a part of our organic law, and now for the first time a foreign government knocks at the door of this Court, and alleges that a controversy has arisen between it and a State of this Union.

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were employed in prohibiting to the States all intercourse with foreign nations (quoting from Vattel). After reading these extracts we can be at no loss to comprehend the intention of the framers of the Constitution in using all these words—'treaty', 'compact', 'agreement.' The word 'agreement' does not necessarily import any direct and express stipulation; nor is it necessary that it should be in writing. If there is a verbal understanding to which both parties have assented, and upon which both are acting, it is an 'agreement', and the use of all these terms—'treaty', 'agreement', and 'compact'—show that it was the intention of the framers of the Constitution to use the broadest and the most comprehensive terms; and that they anxiously desired to cut off all connection or communication between a state and a foreign power; and we shall fail to execute that evident intention unless we give to the word 'agreement' its most extended signification, and so apply it as to prohibit every agreement, written or verbal, formal or informal, positive or implied, by the mutual understanding of the parties."

This case presented to the Court in question whether Holmes, an escaped murderer from the Province of Quebec, in lower Canada, could be lawfully arrested under a warrant of the Governor of Vermont, and delivered by its officer under the command of the warrant to an agent of the Canadian authorities. The Chief Justice gave his reasons for his interpretation of these words in the following language:

"The framers of the Constitution manifestly

> believed that any intercourse between a State and a foreign nation was dangerous to the Union; that it would open a door of which foreign powers would avail themselves to obtain influence in separate states. Provisions were therefore introduced to cut off all negotiations and intercourse between the State authorities and foreign nations. If they could make no agreement, either in writing or by parol, formal or informal, there would be no occasion for negotiations or intercourse between the State authorities, and a foreign government. Hence, prohibitions were introduced which were supposed to be sufficient to cut off all communications between them."

If the treasuries of foreign powers may be looked to by the States as a market for their bonds, with the power lodged in this Court to enforce payment, is not the danger by such intercourse and such agreements obvious "to obtain influence" in separate States? And may not foreign powers with insidious designs upon the United States, discover in such an opportunity "to obtain influence" in some state? The dangers which the great framers of the Constitution appreheneded, and which they anxiously endeavored to avoid might, by a different construction of this clause, become active, and present an opportunity of harm to our common country. If a foreign nation can recover a judgment against a State in an ordinary action of debt ("an anomalous and unheard-of proceeding"), and enforce the collection of the debt by the process of this Court, why may it not result in the acquisition of territory in the State, and at some convenient place?

One great fear of the framers of the Constitution, as expressed by its early expounders, Hamilton, Madison, Jay, and others, was that the conduct of the States towards foreign powers and their subjects might involve the nation in war. To guard against such a calamity, it was clearly the purpose of the Constitution to cut off all communication or intercourse between the States as States and foreign powers.

Madison, 3 Elliott's Debate, 533.

Hamilton, Federalist, No. 80.

In the cases of *Virginia vs. Tennessee*, 148 U. S. 503, *Wharton vs. Wise*, 153 U. S. 155, and *Stearns vs. Minnesota*, 179 U. S. 223, the Court below placed a more limited meaning on the words used in said section of the Constitution, in that it held that the words "compacts" and "agreements" had about the same meanings as "treaty," "alliance", or "confederation."

It is interesting to note that in the case of *Virginia v. Tennessee*, the earlier case of *Holmes v. Jennison* is not mentioned in the opinion of the Court. Undoubtedly there is conflict between the opinions written in the two cases; but between the decisions reached there is perfect harmony. In *Virginia v. Tennessee* the Court had before it an agreement between two states with respect to their boundary lines. This agreement grew naturally and necessarily out of the physical contract of the two States. The Court was impressed that the section of the Constitution under consideration was designed to prevent controversies between the States, and the nature of the agreement before the

Court was calculated to serve the purpose of the Constitution in the prevention of controversies between the States, and the Court felt that the words of the Constitution should be given, as to the subject-matter before it, such a restricted meaning as not to interfere with the manifest purpose of the section.

On the other hand, the subject-matter before the Court in *Holmes v. Jennison* was a contract with a foreign power, not arising out of the natural and necessary relations of the State to such foreign power, and in that case the Court concluded that the main purpose of the Constitution, to wit, the prevention of controversies, would be served by giving to the words "compact" and "agreement" the most extended signification.

The facts in the case at bar illustrate very vividly the wisdom of the rule laid down in the earlier opinions.

It is a fact which this Court will judicially know that France owes to the United States government millions of dollars, and that it has already defaulted in the payment of several millions of dollars of this debt. In the treaty between Monaco and France executed the 17th day of July, 1918, the Principality of Monaco undertakes "to exercise its rights of sovereignty entirely in accord with the political, military, naval and economic interest of France." (Article I)

Said Principality further agrees that the "measures concerning the international relation of the principality shall always form the subject of a prior understanding be-

tween the princely government and the French government." (Article II)

In prosecuting this litigation, Monaco is exercising its right of sovereignty in that it is only a sovereign that is authorized or permitted to bring suit against a state. According to said agreement, this sovereignty must be exercised not in accord with the interest of Monaco and not in accord with the interest of Monaco and France, but wholly and entirely in accord with the political, military, naval and economic interest of France.

Not only that, but inasmuch as this suit concerns "the international relations" the suit must have been brought under and by virtue of a prior understanding or agreement with France.

There is no allegation in the declaration that these bonds have ever been presented or payment refused by the State of Mississippi until after they were received by Monaco. The declaration contains no allegations in reference to this, but Exhibit "D", page 57 to the declaration, states as follows: "The State of Mississippi has long since defaulted on the principal and interest of these bonds, the holders of which have waited for some ninety years in the hope that the State would meet its obligations and make payment."

Monaco, evidently under the direction of, or at least with the acquiescence of France, has accepted or acquired these ancient bonds of the State of Mississippi, and is here asking for permission to file suit on same against Mississippi.

In the event this Court holds that it has jurisdiction of a suit of this character, it must necessarily hold that it has the power to coerce the State of Mississippi in order to require it to comply with the judgment of this Court.

In the event Monaco is successful in this proposed litigation, inasmuch as the individual holders of the bonds cannot sue thereon, it could easily acquire the remainder of said bonds. May it not then be said that this suit is being brought by Monaco at the instigation of France, defaulted debtor to the United States, for the purpose of obtaining influence or with some insidious design to materially affect its relation to the United States.

The bonds in question were issued by the State years and years ago. They were sold to individuals who did not have any right of action in this Court. Since the issuance of said bonds, at times the State has been poverty stricken and at other times it has been prosperous. During its days of prosperity, there was no effort made to collect these bonds. Now, at a time when it can hardly pay its actual, necessary expenses and when the Federal Government, through its agencies, is sending millions of dollars into the State in relief work and in order to assist the State to rehabilitate itself, these bonds are purchased by the plaintiff. Suppose that during the Fall of 1933 the State of Mississippi had attempted to borrow money or to issue bonds and sell them to the Principality of Monaco, and had undertaken to give that country the power at this time to file suit in this Court if the bonds were not paid and to confer the

power upon this Court to coerce the State of Mississippi in the payment of said bonds. Is it debatable that such an arrangement would have been invalid without the consent of Congress, and is it conceivable that Congress would have given its consent. The borrower wears the yoke of the lender. In public as well as in private life it often happens that the first step towards subserviency is the acceptance of a loan. Such an arrangement would have given to a foreign power an interest and an influence in this country that the general Government would not for one moment have tolerated.

Well, if a foreign power cannot deal directly with a State, and buy her bonds without the consent of Congress, but may take an assignment of these bonds from an individual, and thereby create the very relationship the Constitution forbids, then the wisdom of the statesmen is canceled by the artifice of the speculator, and a wholesome restraint of the Constitution becomes a rope of sand.

V.

THE PROPOSED LITIGATION BY THE PRINCIPALITY OF MONACO UPON THE CAUSES OF ACTION STATED IN HER DECLARATION IS AN ATTEMPT BY HER TO EVADE THE PROHIBITIONS OF THE ELEVENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

I assume that the purpose of the eleventh amendment was to protect the States and not to punish individuals. But if bonds bought by individuals can be sold to a foreign government which can in turn enforce their payment in

this Court, then the net result of the amendment is to impose a hardship on individuals without securing to the State any immunity it did not theretofore enjoy.

Another startling result of such a construction is that a constitution framed to promote the general welfare of the people of the United States guarantees to a foreign government rights and privileges that are utterly denied to a citizen of this country.

There are no facts in our constitutional history better known than those which led to the adoption of the eleventh amendment, and these facts show beyond all question that the purpose of the amendment was to make it forever plain that the plighted faith of the State is the only security for the payment of its obligations.

In the event this Court holds that Monaco has the right to bring this suit, then by such holding and by the holding of the Court in *New Hampshire v. Louisiana*, 108 U. S. 76, we would deduce the following rule, to-wit:

That a sovereign State of the United States could not represent the welfare and property rights of its citizens, and bring a suit in this Court, but if such citizens will relinquish all their right, title and interest in such claim to a foreign state then such foreign state may come into this Court and enforce such claim.

Such a rule would be intolerable. This is especially true in the case at bar wherein it appears that the plaintiff herein has undertaken by a solemn treaty "to exercise its rights of sovereignty entirely in accord with the political,

military, naval and economic interest of France", a defaulting debtor of the United States.

If the state can be sued by a foreign power in an ordinary action of debt, and a judgment rendered against her by this Court, we earnestly submit the following language of the Court in *Hans v. Louisiana* is strikingly apposite:

> "If this is the necessary consequence of the language of the Constitution and the law, the result is no less startling and unexpected than was the original decision of this Court that, under the language of the Constitution and of the Judiciary Act of 1879, a State was liable to be sued by a citizen of another State, or of a foreign country."

Every attempt to evade the Eleventh Amendment has been steadily repelled by this Court, as appears from these and many other cases:

Louisiana v. Jumel, 107 U. S. 711.

New Hampshire v. Louisiana, 108 U. S. 76.

Cunningham v. Macon and B. R. Co., 109 U. S. 446.

Hagood v. Southern, 117 U. S. 52.

Ex Parte Ayers, 123 U. S. 443.

North Carolina v. Temple, 134 U. S. 22.

Murray v. Distilling Co., 213 U. S. 151.

VI.

THE DECLARATION OF THE PRINCIPALITY OF MONACO DOES NOT STATE A CONTROVERSY BE-

TWEEN HER AND THE STATE OF MISSISSIPPI JUSTICIABLE UNDER THE CONSTITUTION OF THE UNITED STATES AND COGNIZABLE UNDER THE JURISDICTION OF THIS COURT.

The declaration is nothing more than an ordinary action of debt. Its purpose is to secure an ordinary judgment in debt; it seeks to enforce no lien; it seeks to enforce no compact or agreement entered into with the assent of Congress; it seeks a judgment which can be enforced only by a compulsive force applied to the Legislative Department of the State to levy a tax to pay the judgment.

This Court has never in its history assumed jurisdiction of such an action. One of the reasons assigned why an action cannot be maintained against a state to compel the payment of its debts, whoever may be the plaintiff, is that it might necessitate an interference with, if not the complete control and direction of, the legislative function of assessing, levying, collecting, and distributing taxes, which this Court up to the present has regarded beyond its competency. In this case there is no means of rendering the judgment effective unless this Court is prepared through its receiver, to take charge of and administer the affairs of the State of Mississippi.

In *Cherokee Nation v. State of Georgia*, 5 Pet. 1, Mr. Chief Justice Marshall said:

> "The mere question of right might, perhaps, be decided by this Court in a proper case with proper parties. But this Court is asked to do more than decide on the title. The bill requires

us to control the Legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the Court may well be questioned. It seems too much of the exercise of political power to be within the proper province of the judicial department."

Professor Dicey, in his work on the Conflict of Laws, page 38, says:

"GENERAL PRINCIPAL NO. III. The sovereign of a country, acting through the courts thereof, has jurisdiction over (i. e., has a right to adjudicate upon) any matter with regard to which he can give an effective judgment, and has no jurisdiction over (i. e., has no right to adjudicate upon) any matter with regard to which he cannot give an effective judgment."

In *Gordon vs. United States*, 117 U. S. 698, Mr. Chief Justice Taney said:

"The award of execution is a part and an essential part of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion, which would remain a dead letter, and without any operation upon the rights of the parties unless Congress should at some future time sanction it, and pass a law authorizing the Court to carry its opinion into effect. Indeed, no principle of constitutional law has been more firmly es-

> tablished or constantly adhered to than the one above stated; that is, that this Court has no jurisdiction in any case where it cannot render judgment in the legal sense of the term, and when it depends upon the Legislature to carry its opinion into effect, or not, at the pleasure of Congress."

Interstate Commerce Commission v. Brinson, 154 U. S. 447.

RE: Sanborn, 148 U. S. 222.

La Abra Silver Mining Co. v. U. S., 175 U. S. 423.

In *U. S. v. Guthrie*, 17 How. 284, 303, Mr. Goodrich was appointed Chief Justice of the Territory of Minnesota, and before the expiration of his term he was removed, and Mr. Fuller was appointed in his stead and received the salary. Mr. Goodrich being refused, upon demand, the balance of his salary, brought mandamus against the Secretary of the Treasury to compel its payment. Upon writ of error this Court said:

> "The only legitimate inquiry for our determination upon the case before us is this, whether under the organization of the Federal Government or by any known principle of law there can be asserted a power in the Circuit Court of the United States for the District of Columbia, or in this Court, to command the withdrawal of a sum or sums of money from the Treasury of the United States, to be applied in satisfaction of disputed or contravened claims against the United States? This is the question, the very question presented

for our determination; and its simple statement would seem to carry with it the most startling considerations; nay, its unavoidable negation, unless this should be prevented by some positive and controlling command; for it would occur, a priori, to every mind that a treasury not fenced around or shielded by fixed and established modes and rules of administration, but which could be subjected to any number or description of demands, asserted and sustained through the undefined and undefinable discretion of the courts, would constitute a feeble and inadequate provision for the great and inevitable necessities of the Nation. The Government, under such a regime, or, rather, under such an absence of all rule, would, if practicable at all, be administered not by the great departments ordained by the Constitution and laws, and guided by the modes therein prescribed, but by the uncertain and, perhaps, contradictory action of the courts in the enforcement of their views of private interests."

These observations apply with equal force to the treasuries of the States, which are sovereign within the province of their reserved powers, including the management of their fiscal affairs, to the fact that the Legislative Department (the department which controls the purse and appropriates money) is, and has been for centuries, separate and independent, and not subject to compulsive means, can be ascribed many of the most cherished rights of the English-speaking people.

Section 7, Article 6, Constitution of 1832, the Constitution which was in effect at the time the bonds in con

troversy were issued, provides as follows: "No money shall be drawn from the treasury but in consequence of an appropriation made by law." Act Approved March 29, 1833, gave right to sue but provided no execution would issue.

This was the organic law of the state at the time the bonds were purchased, and the purchaser thereof well knew that they were dependent upon the legislature in being at the time the bonds matured for the payment of said bonds. The bonds were issued under the Constitution and law of the State of Mississippi, and the holders thereof had no rights in respect to them which are not given under the law of Mississippi. The law in existence when a contract is made, affecting its validity, construction and enforcement, enters into the contract and forms a part of it. When the bonds were issued by Mississippi, it was a part of the contract that said bonds could be paid only by an appropriation made by the State Legislature. The Constitution and laws of Mississippi was as much a part of the contract between the purchasers of said bonds and their assignees and the State as if the provisions of the Constitution had entered into the written terms of it. Under the terms of this Constitution the holder of the bonds clearly had to rely for their payment upon the good faith of the Legislature of the State of Mississippi subject to restrictions at any time by the people of the State.

> "Contracts should be construed as made with reference to the established law of the land, unless it is otherwise clearly indicated by the terms of the agreement." *Wilson v. Rosseau*, 4 How. 646, 11 L. ed. 1141.

"The laws in force at the time of the execution of a contract form a part of it without any express stipulation to that effect." *Bronson v. Kinzie*, 1 How. 311, 11 L. ed. 143.

"The laws in existence when a contract is made, including those which affect its validity, construction, discharge and enforcement, enter into and form a part of it." *Walker v. Whitehead*, 16 Wall., 314, 21 L. ed. 357.

"Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or interpreted in its terms." *United States ex rel Von Hoffman v. Quincy* (*Von Hoffman v. Quincy*), 4 Wall. 535, 18 L. ed. 403.

In many of the cases in this Court in which attempts have been made to collect debts from states, it has been clearly intimated that, over and above the objection that states are exempt from suit by the Eleventh Amendment, courts had no process by which they could collect debts from States.

In *Marye v. Parsons*, 114 U. S. 325, Mr. Justice Matthews, speaking for the Court, said:

"So far as the contract with the complainant was, that the state should pay to him his coupons at maturity, there is no doubt a breach, but he asks no relief as to that, for there is no remedy by suit to compel the State to pay its debt."

In *Re Ayers*, 123 U. S. 443, Mr. Justice Matthews again said:

> "The remedy sought, in order to be complete, would require the Court to assume all the executive authority of the State so far as it related to the enforcement of this law, and to supervise the conduct of all persons charged with any official duty in respect to the levy, collection, and disbursement of the tax in question until the bonds, principal and interest, were paid in full, and that, too, in a proceeding in which the state as a state was not and could not be made a party. It needs no argument to show that the political power cannot be thus divested of its jurisdiction and the judiciary set in its place."

In *Rees v. City of Watertown*, 19 Wall., 107, 116, the Court said:

> "We are of the opinion that this Court has not the power to direct a tax to be levied for the payment of these judgments. The power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only; and, second, by the power of legislative authority only. It is a power that has not been extended to the judiciary; especially is it beyond the power of the Federal judiciary to assume the place of a state in the exercise of this authority, at once so delicate and so important."

It is suggested that it is the duty of the Court to assume jurisdiction, hear the case, and adjudge the indebted-

ness, even if it cannot enforce its judgment but must leave it optional to the State of Mississippi whether she will satisfy the judgment. This suggestion does not, we respectfully submit, accord with the authorities we have cited, nor with the course pursued by this Court in *Kentucky v. Dennison*, 24 How., 66, —— to decline jurisdiction unless it has the power to execute its judgment.

> "But no court sits to determine questions of law in this."

Marye v. Parsons, 114 U. S. 330.

It is insisted that in the case of *South Dakota vs. North Carolina*, 192 U. S. 286, this Court held that an action by one State against another State on its bond was an action to enforce a property right; "was a controversy" within the meaning of the Constitution of the United States, and within the jurisdiction of this Court. The Court, however, specifically pretermitted the question as to whether or not it had the right to collect a judgment for money against a sovereign state, the Court using the following language:

> "There is in this case a mortgage of property, and the sale of that property under a foreclosure may satisfy the plaintiff's claim. If that should be the result there would be no necessity for a personal judgment against the State. Equity is satisfied by a decree for a foreclosure and sale of the mortgaged property, leaving the question of a judgment over for any deficiency to be determined when, if ever, it arises. And sure, if, as we have often held, this Court has jurisdiction of an action by one State against an-

> other to recover a tract of land, there would seem to be no doubt of the jurisdiction of one to enforce the delivery of personal property."

Mr. Justice White dissented, and his dissent was concurred in by Mr. Chief Justice Fuller, Mr. Justice Day and Mr. Justice McKenna. Four of the Judges held that this Court had no jurisdiction and none of them held that the Court could give judgment for money against a sovereign state.

The Court then directed a decree to be entered for the sale of the pledged stock to be applied to the debt as ascertained.

In speaking of the authority of the decision of the Court, in *Chisholm v. Georgia*, this Court had said in *Hans v. Louisiana*, 134 U. S. 1, Mr. Justice Bradley delivering the opinion:

> "Adhering to the mere letter, it might be so; and so, in fact, the Supreme Court held in *Chisholm v. Georgia;* but looking at the subject as Hamilton did, and as Mr. Justice Iredell did, in the light of history and experience and the established order of things, the views of the latter were clearly right, as the people of the United States in their sovereign capacity subsequently decided."

In *United States v. North Carolina* the State consented to be sued in an action of debt, and submitted the matter in controversy to the decision of this Court, though by the strict letter of the Constitution controversies between

the United States and the States were not within the jurisdiction of this Court.

In *United States v. Michigan*, the controversy arose out of an agreement or compact made by the United States through Congress with the State of Michigan, though for a pecuniary demand.

In controversies between states, justiciable in their nature, the consent of the States to be sued by a state is given by and at the time of its admission into the Union.

Virginia v. West Virginia, 201 U. S. 290.

Cohens v. Virginia, 6 Wheat., 264.

The States when and by their admission to the Union become parties to the compact, each has the reciprocal right of suit in a controversy of a justiciable nature. But all controversies between states are not justiciable, and though they come within the letter of the Constitution as decided by the Court in *New Hampshire v. Louisiana*, 108 U. S. 76; *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 265; *Kentucky v. Dennison*, 24 How. 66; *Hans v. Louisiana*, 134 U. S., 1.

The Constitution is not a compact entered into between the states and foreign powers, and the right to sue is not reciprocal; and we submit that consent to be sued must be given, and the controversies which are of a justiciable nature between a state and a foreign power are those only that arise out of compacts or agreements entered into with the consent of Congress; and further, that this Court has no

power to enforce its judgment, and for this reason without jurisdiction.

VII.

THE ALLEGED RIGHT OF ACTION HAS LONG SINCE BEEN DEFEATED AND EXTINGUISHED BY REASON OF THE FOLLOWING FACTS APPEARING ON THE FACE OF THE DECLARATION, TO WIT:

1. THE COMPLETION OF THE PERIOD OF LIMITATION OF ACTION AS PRESCRIBED BY THE STATUTES OF MISSISSIPPI.

2. THE PLAINTIFF AND ITS PREDECESSORS IN TITLE HAVE BEEN GUILTY OF LACHES.

3. THE RIGHT OF ACTION, IF ANY, IS NOW AND HAS BEEN FOR A LONG TIME, STALE.

STATUTE OF LIMITATIONS.

The declaration shows that the bonds, which are the basis of the proposed suit, matured, some in 1850, some in 1858, some in 1861, and some in 1866, and a part of the coupons as early as 1840.

There is no attempt in the declaration to explain, excuse or give any reason for this unreasonable and inexcusable delay unless it could be said that the letter written by the donors of the bonds to the plaintiff at the time of delivery thereof does so. Said letter is Exhibit "D" to the declaration and is on page 57 thereof. One paragraph is as follows: "Our lawyers have advised us that there is

no basis on which we can maintain a suit against Mississippi on these bonds but that such a suit can only be maintained by a foreign government or one of the United States."

I will, of course, concede that the State cannot be sued except by its consent, and, further, that unless the State has consented to be sued, then the statutes of limitation would not run.

I maintain, however, and will attempt hereinafter to show conclusively that the State has consented by statute to be sued on claims of the character involved in this proposed litigation, and that said rights of action have long since been barred by the statute of limitations.

RIGHT TO SUE THE STATE.

Appendix No. 2 hereto is a copy of the statutes contained in the various Codes of Mississippi from 1833 to date authorizing suits to be brought against the State. See page 91.

The act of February 15th, 1833, which is also Section 1, Article 2, Chapter 54, Hutchinson's Code 1798-1848, provided: "Hereafter it shall be competent for any person or persons deeming him, her, or themselves, or body politic, to have a just claim against the State of Mississippi to exhibit and file a bill in equity in the Superior Court of Chancery against the State of Mississippi."

This statute was construed in the case of *State of Mississippi vs. Johnson*, 25 Miss. 625. The basis of the suit

was a certain bond issued by the State of Mississippi generally known as the Mississippi Union Bank Bonds, dated the 5th day of June, 1838, and due the 5th day of February, 1850; *that is to say the bond in said cause was one of the same series of bonds mentioned in Counts* 3 *and* 4 *of the declaration in this cause.* The Court in determining whether or not the appellee had a statutory right to sue the State, held as follows: (Text page 724)

> "This was a bill filed in the superior court of chancery, against the State of Mississippi, by the appellee, under the provisions of the statute, enacted in compliance with the 10th section, 7th article of the constitution, directing the method and designating the court in which suits against the State should be brought."

Mr. Justice Yerger, in an opinion in which he stated: "I concur most fully in the opinion of the Court," held as follows: (Text 770-771)

> "The State of Mississippi has declared, 'that the legislature shall direct, by law, in what manner, and in what courts, suits may be brought against the State'. Constitution, Art. 7, Sec. 10.
>
> "In obedience to this requirement of the constitution, it was enacted by the legislature, by an act passed 15th February, 1833, that 'hereafter, it shall be competent for any person or persons deeming him, her, or themselves, or body politic, to have a just claim against the State of Mississippi, to exhibit and file a bill in equity, in the

superior court of chancery against the State', etc. Hutch. Code, 769.

"Since the enactment of this statute, many suits have been instituted against the State in accordance with its provisions, and decrees in many instances have been rendered against the State. The present suit was brought pursuant to these provisions, and a doubt cannot, therefore, exist, that under the constitution and laws, we have jurisdiction of it, and are bound to render judgment in the premises.

"In this matter we have no discretion: the path of duty is plain and obvious. As the constitution and laws have authorized suits to be instituted against the State, it is the duty of the court to pronounce judgment in them, as in all other cases that may come before it."

There can be no doubt but that under the Act of 1833, the owner or holder of a bond of the State of Mississippi had a perfect statutory right to sue the State. The Court not only upheld the right of plaintiff to sue the State on said bonds, but affirmed the judgment of the lower Court against the State for the principal and interest on said bonds.

In 1856, the Superior Court of Chancery was abolished by an amendment to the State Constitution. From 1856 until the adoption of the Code of 1871, the State had no statutory provision authorizing suits against it.

In the case of *Whitney vs. State*, 52 Miss. 732, decided in 1876, the Supreme Court of this State held as follows:

"The statute of limitations constitutes no defense, because, although more than three years intervened between the making of the contract and the bringing of the suit, that period had not elapsed since the adoption of the new Code, October 1, 1871, by virtue alone of which the state was made amenable to suit. Without some statutory enactment permitting it, the state cannot be sued. From the abolition of the old superior court of chancery, by constitutional amendment in 1856, to the adoption of the code in 1871, we had no such statutory provision."

Section 1573 of the Code of 1871 provided that the State of Mississippi should be liable to all persons whatever having claims at law or in equity against the State *"to the same extent as individual persons are liable to each other, and may be sued by any person having a cause of action,"* after demand and payment refused. See App. No. 2, page 92.

In *Whitney vs. State*, 52 Miss. 733, Whitney brought suit against the State for certain arms and ammunitions furnished the State during the Civil War. The records show that the account sued on had been presented for payment to the auditor of public accounts, and the payment demanded had been refused by him. The Court upheld the right of plaintiff to bring the suit in the language hereinabove quoted from said opinion. This case was decided in 1876—about five years after the adoption of the Code of 1871, and the Court holds that if an individual has a claim against the State that it may sue the State provided demand is made before suit is filed.

CODE OF 1880 AND SUBSEQUENT CODES DO NOT AUTHORIZE THE STATE TO BE SUED.

Section 218 of the Code of 1880 makes it the duty of the Auditor of Public Accounts "to examine, state, settle, and audit all accounts, claims or demands whatsoever against the State, arising under any act or resolution of the Legislature, and to grant to every claimant authorized to receive same a warrant upon the state treasury." For full section see Appendix 2, page 92.

Section 219 of the Code of 1880, provides as follows:

> "The auditor shall not draw warrants without or in excess of, appropriations of money by law for the purpose except in those cases specially provided for by law."

The Constitution of 1890, Section 63 thereof, provides as follows:

> "No appropriation bill shall be passed by the Legislature which does not fix definitely the sum thereby authorized to be drawn from the treasury."

Section 2641, Code of 1880, provides:

> "Any person having a claim against the State of Mississippi after demand made of the Auditor of Public Accounts therefor, and his refusal to issue a warrant on the treasury in payment of such claim, may bring suit therefor against the State." See Appendix 2, page 93.

Section 218 of the Code of 1880 is the same as Section 132 of the Code of 1871, Section 229, Code of 1892, Section 239, Code of 1906 and Section 3727, Code of 1930.

Section 219 of the Code of 1880 is the same as Section 230, Code of 1892, Section 240, Code of 1906 and Section 3728, Code of 1930.

The Constitution of 1869 had no regulation in reference to appropriations made by the Legislature. In other words, it did not have any provision containing the same or similar matter as is contained in said Section 63 of the Constitution of 1880.

The Code of 1871 did not prohibit the State Auditor from issuing warrants "without or in excess of appropriations of money." In other words, the Code of 1871 authorized the Auditor to issue warrants in settlements of claims. The Code of 1880, and the Code since then, have prohibited him from issuing warrants unless an appropriation had been made for that purpose.

The Supreme Court of this State in construing Section 4800 of the Code of 1906, same as Section 2641, Code of 1880, authorizing the State to be sued, in the case of *Gulf Export Co. vs. State*, 112 Miss. 452, held as follows:

> "And the auditor cannot allow a claim for which no appropriation is made. If he refuses to audit and allow a claim over which he has jurisdiction, then the complaining party may sue the state. If the claim is one which the auditor cannot audit and allow, the complaining party can

> and must seek relief from the legislature, one of the co-ordinate branches of our state government. Such is the meaning of section 4800 of the Code as already judicially interpreted by our court."

The statute in reference to suing the State and in reference to the duties of the Auditor was the same from the Adoption of the Code of 1880 until now. Section 63 of the Constitution of 1890 was not in the Constitution until 1890.

It, therefore, conclusively appears that since the Code of 1880 the Auditor could not issue a warrant to persons entitled thereto unless and until the Legislature had made an appropriation for that purpose, and he not being authorized to issue a warrant, his refusal so to do would not give a person having a claim against the State the right to sue.

State v. Dinkins, 77 Miss. 874.

Hall v. State, 79 Miss. 38.

LIMITATIONS OF ACTION.

The Code of 1871 provided that the State might be sued. However, it had no statute of limitation in reference to bonds or contracts under seal.

Chapter 26, Laws of 1873, approved April 19th, 1873, provided as follows:

> "That all actions of debt, or covenant, founded upon any bond, obligation or contract, under seal, or upon an award of arbitrators shall be

commenced within seven years next after the cause of said action, and not after." See Appendix 3, page 96.

It will be noted that this statute does not contain any exception on account of disability or otherwise. It is true that Section 2156, Code of 1871, makes exception for persons under disability, but this would not apply to the Act of 1873.

The bonds mentioned in the declaration in this case all matured prior to the enactment of said Act. Said section 1573, Code of 1871, authorized suits against the State. *Whitney v. State*, 52 Miss. 733, supra. Therefore, the staute of limitations against the bonds in question began to run April 19th, 1873.

Said Section 1573, Code of 1871, authorizing the State to be sued, and Chapter 26, Laws of 1873, fixing the statute of limitations upon bonds, under seal, were in full force and effect until the adoption of the Code of 1880. Said Code in reference to rights to sue the State and the limitation of action did not become effective until the first day of November, 1880. See Sections 1 and 11 of the Act to Approve and Adopt the Revised Code of 1880, and Sections 1 and 2 of Chapter 1 of said Code. See Appendix 2, page 94.

It, therefore, appears conclusively that the holders or owners of the bonds mentioned in the declaration had the statutory legal right to sue the State thereon beginning at the adoption of the Code of 1871, and that the statute *of limitations (7 years) began to run against said suits on*

the 19th day of April, 1873, and that the right to sue continued and the bar of the statute of limitation was completed on the 19th day of April, 1880.

Under the Code of 1880, and codes subsequent to said date, the holders or owners of said bonds did not have the right to sue the state. See page 60 of this brief.

Chapter 12, Laws of 1865, approved November 29, 1865, provided that all persons having a claim "for salary, services or otherwise" should present the claim to the state treasury within three months after the rendition of public services or the date that such salary or such indebtedness became due and payable, and in the event of failure to do so, the claim would be barred.

See Appendix No. 3, page 98.

Chapter 3, Laws of 1866, authorized and required the State Auditor to issue warrants "for all legal claims against the State accruing since the 16th day of October, 1865, and which was declared forfeited by the Act entitled an act in relation to officers and other persons having claims on the State Treasury, approved November 29th, eighteen hundred and sixty-five" by extending the time within which such warrants could be obtained and presented to the first day of April, 1867. See Appendix 3, page 100.

The bonds mentioned in Counts 1 and 2 of the declaration were barred by these statutes.

The bonds mentioned in the declaration were issued under the laws of the State of Mississippi, and the statute of limitations of said State would control.

Section 721 of the Revised Statutes, Section 725, U. S. C. A., is as follows:

> "The laws of the several states except where the constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decisions in trials at common law in the courts of the United States in cases where they apply."

It has been uniformly held that the statutes of limitations are embraced within this act, and the Federal Courts apply the statute of limitations as prescribed by local law even in cases exclusively within the jurisdiction of the Federal Court.

Bauserman v. Blount, 137 U. S. 647;
Campbell v. Haverhill, 155 U. S. 614.

> "The courts of the United States, in the absence of legislation upon the subject by Congress, recognize the statute of limitations of the several states and give them the same construction and effect which are given by local tribunals."
> *Leffingwell v. Warren*, 2 Black 599;
> *Green v. Neal*, 6 Peters 29;
> *Davis v. Briggs*, 97 U. S. 628;
>
> *Amy v. City of Dubuque*, 98 U. S. 470.

It is a general rule of law that statutes of limitations do not run against a sovereign. This Court has repeatedly held that the statutes of limitation do not run against the United States.

Grand Trunk Western Ry. Co. v. United States, 252 U. S. 112.

It may be contended here that the statute of limitations does not run against the Principality of Monaco. However, this Court has held that where an obligation was transferred or assigned to the United States after the statute of limitations was completed that such statutes barred the United States.

In the case of *United States vs. Buford*, 3 Peters 12, 7 L. ed. 585, the Court held as follows:

> "As more than five years had elapsed from the date of the receipt to the assignment, the statute of limitations will bar a recovery of this claim unless the transfer of it to the United States has changed its character, or the terms of the receipt prevent the statute from operating, or, by some promise or agreement between Morrison and Buford, the statute has been waived.
>
> "It can require no argument to show that the transfer of any claim to the United States cannot give to it any greater validity than it possessed in the hands of the assignor. If the character of the claim be so changed as to exempt it from the operation of the statute of limitations after the transfer, such transfer cannot have the effect to take the claim out of the statute when it has run."

This opinion was cited with approval in *United States vs. Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U. S. 120, 30 L. ed. 81, wherein the Court held as follows:

"It takes such paper subject to all the equities existing against the person from whom it purchases at the time when it acquires its title; and cannot therefore maintain an action upon it, if at that time all right of action of that person was extinguished, or was barred by the Statute of Limitations. *United States v. Buford*, 3 Pet. 12, 7 L. ed. 585; *King v. Morrall*, 6 Price, 24."

The general rule, both in this Court and in the courts of Mississippi, is that in actions at law it is not necessary for the declaration, when it appears on the face thereof that the cause of action therein stated is barred, to allege facts that would defeat the bar of the statute, but all these cases, in both courts, which I have had opportunity to examine were construing statutes where there were exceptions to the rule laid down in the statute; that is, where certain persons under disability were excepted from the bar created by the statute, or where there were saving clauses in favor of infants, idiots, insane persons and others.

There were no exceptions or saving clauses in the act of Chapter 26, *Laws of* 1873.

Actions on bonds, contracts, etc., under seal were barred as to all persons regardless of any and all disabilities seven years after the right of action accrues.

Article II of Chapter 45, Code of 1871, is the statute of limitations in reference to personal actions. Section 2151 to Section 2155, both inclusive, of said Code, provided limitations for various and sundry causes of action. None

of them, however, provided any bar for bonds or contracts under seal. See Appendix 3, page 96.

Section 2156 of said Code provides in part as follows:

> "If any person entitled to bring *any of the actions before mentioned* shall, at the time at which the cause of action accrued, be under any one or more of the following disabilities." For full section see Appendix 3, page 97.

Said chapter 26, Laws of 1873, provides as follows:

> "That all actions of debt or covenant founded upon any bond, obligation or contract under seal, or upon the award of arbitrators, shall be commenced within seven years next after the cause of such action accrued, and not thereafter."

The exceptions granted or the saving provisions of said Section 2156 of the Code of 1871 do not apply to the bar provided by said Chapter 26, Laws of 1873.

Said statute was not included in the exceptions or saving clauses provided in said Section 2156. In fact it was not enacted until two years after the Code of 1871 was adopted. Had the Legislature intended that said exceptions would apply to said Section it could have very easily so provided, or it could have amended one of the sections preceding Section 2156 instead of enacting a new statute outright.

In *Beaubein vs. Beaubein*, 23 How. 190, 64 U. S. 484, this Court construed an act of limitation in the State of

Michigan and, after quoting the statute, held: "There is no saving clause in this as to infants, femes covert, or residents beyond seas", and when the statute had run the claim was barred as to all persons.

In the case at bar the bonds mentioned in the declaration were barred by the statute of limitations in 1880. They were not assigned or donated to the plaintiff until fifty-three years thereafter. The absolute bar was complete for a long time before the assignment, and the plaintiff did not receive any rights under said assignment.

The right to sue the State conferred by the Code of 1871 was repealed or taken away by the Code of 1880. This was nothing more or less than a statute of limitation. As hereinbefore shown, all of the bonds were long past due and the statute of limitations was completed prior to the adoption of the Code of 1880. The act of the adoption of the Code of 1880 became effective on March 5th, 1880. The Code, however, did not become effective until November 1st, 1880. Therefore, the owners of the bonds in question were given notice by statute duly and legally enacted in March, 1880, that their right to sue the State would be taken away November 1st of the same year. It might be contended that a statute conferring the right to sue the State was not a statute of limitation in that the creditors of the State would have no time within which to file a suit, but such argument cannot avail under the statutes just mentioned, for the reason that said bond holders were given six months' notice that the right to sue the state would be repealed on November 1st. I presume it will not be denied that the State could have enacted in March, 1880, a

statute providing that actions on bonds could not be instituted after six months from March.

I quote from the dissenting opinion of Judge White, concurred in by three other members of the Court in the case of *South Dakota vs. North Carolina*, 192 U. S. 286, 48 L. ed. 448, as follows:

> "But let me analyze the proposition in order to see what it leads to. What is a statute of limitations? It is but the action of the state in determining that, after the lapse of a specified time, a claim shall not be legally enforceable. In this case, from the very inception of the alleged obligation to the time of the transfer to the state of South Dakota, there was no legal cause of action for the enforcement of the claim under the laws of North Carolina, and by the obligation of the 11th Amendment no cause of action on the subject could be asserted to exist in any court of the United States. To hold that there is a right to recover in this case which would not exist if there had been a statute of limitations barring the cause of action, although none had ever arisen, is but to say that the right of the parties is to be determined by words having no significance whatever. The fact that the state of North Carolina, in her own courts, was not subject to be coerced as to the claim in question, was, in effect, a state statute of limitations, since the act of the state in forbidding the arising of a cause of action is certainly in reason the equivalent of an act of that state barring a cause of action in a case where one could exist. It is the nonexistence of the cause of action at the time of the transfer, upon which

rests the rule preventing a sovereign from recovering on a claim which was barred at the time he acquired it. This is true also of the 11th Amendment. As that amendment from the date of the inception of the alleged contract prohibited the assertion of any cause of action concerning the same in the courts of the United States, the amendment was substantially a national statute of limitations. Thus operating, it furnishes an effectual barrier, preventing the state of South Dakota from asserting in the courts of the United States that it had acquired from its transferrer a cause of action which the Constitution of the United States prevented from ever existing so far as the judicial power of the United States was concerned."

LIMITATION OF ACTION BARS THE REMEDY AS WELL AS THE RIGHT.

Section 2685, Code of 1880, provides as follows:

> "The completion of the period of limitation herein prescribed to bar any action shall defeat and extinguish the right as well as the remedy; but the former legal obligation shall be a sufficient consideration to uphold a new promise based thereon." See Appendix 3, page 100.

This section is the same as Section 2755, Code of 1892, Section 3115, Code of 1906 and Section 2313, Code of 1930.

It may be contended that the statute of limitations may be raised only by plea, but in this case the face of the declaration shows that the bar is complete and that there

is no exception thereto, and under the laws of Mississippi the state would be required to plead the statute.

In the case of *Trowbridge, Mayor of Vicksburg, vs. Schmidt,* 82 Miss. 475, the Supreme Court of Mississippi held as follows:

> "It is indisputable that a municipal board cannot lawfully give away public money. It is certain, also that a former liability extinguished by the bar of the statute of limitations is no debt. It follows that paying it is giving away public money, and this is ultra vires, and the treasurer may refuse to pay it. *Files v. McWilliams,* 49 Miss. 578; *Klein v. Board,* 51 Miss. 878." * * *

> "It is the plain duty of a county or municipal board to plead the statute of limitations when it can, under the facts. Such boards are the people's trustees."

This would apply with equal force to a state.

My contention, therefore, is that the declaration does not state a cause of action. In fact, it shows affirmatively that plaintiff has no cause of action. To permit it to file suit, therefore, would be a vain and useless thing.

The Principality of Monaco may accept charitable donations from residents of England and from the State of New York, but it cannot use this Court as an agency to compel a charitable donation from the State of Mississippi.

LACHES.

The privilege of the plaintiff to sue in this court is not a matter of right but purely a matter of grace—a matter that is entirely within the discretion of the court. This court has held that in cases where sovereign powers are the parties, it will not be bound by the judicial rules of pleading but will look to the substance rather than to the form.

As a general rule the plaintiff, in a court of law, is not required to negative the statute of limitations or laches, but the general rule does not apply in this case for four reasons: First, because in this case there are no exceptions to the statute limiting the right of action to seven years; Second, because the state must plead the statute; and third, the plaintiff is seeking the privilege to sue a sovereign state, and for this reason I submit that it is incumbent upon the plaintiff to disclose all facts, material and relevant, in order that the court may determine whether the plaintiff has a cause of action without putting the state to the necessary expense to defend the suit; fourth, because the right as well as the remedy is barred.

The declaration shows on its face that the interest coupons have not been paid since 1840—more than 90 years ago—that the bonds matured in 1850, 1858, 1861 and 1866; that at least a part of its alleged cause of action accrued 93 years ago, and all of it accrued more than 67 years ago, yet plaintiff makes absolutely no effort to explain this unreasonable and unconscionable delay. Under the doctrine of laches, all rights of the holders of the bonds are now extinguished.

I admit of course, that no part of the delay has been caused by plaintiff, for the record shows that the bonds in controversy were delivered to plaintiff September 26, 1933, the presumption is that plaintiff had to negotiate with and employ attorneys after it had accepted the bonds. The attorneys, after being employed, had to ascertain the facts, a large part of which happened nearly 100 years ago, examine the statutes and authorities to determine the rights of the parties making demand on the state and to prepare the pleadings. However, all of this was done and the motion for leave was actually filed December 18, 1933. It might be said therefore, that the plaintiff filed its motion for leave immediately after receiving said bonds. However, the laches of the original bond holders and subsequent holders are chargeable to plaintiff.

Part of the interest coupons matured in 1840. The holders thereof had the right to sue the state from that date until 1856 and again from 1871 to 1880, a total period of 25 years. The Union Bank bonds matured in 1850. The right to sue the state existed from then until 1856, and from 1871 to 1880, a period of 15 years. The other bonds matured not later than 1866 and the right to sue the state existed from 1871 to 1880. This unreasonable delay was not occasioned by any act on the part of the state. She was, at all times, refusing to pay said bonds and coupons, and in 1876, by an amendment to its Constitution, prohibited the Legislature of the state from paying same, or any part of same.

Not only this, but the court of the State of Mississippi had held that the owners thereof had a right to sue the

state and had upheld the validity of the bonds. *Johnson v. State,* supra. Yet, the persons who owned said bonds during said time, made no effort whatever to collect same.

During the last 25 or 30 years there have been issued bonds of the State of Mississippi, that are now outstanding, as of October 1, the beginning of the fiscal year of said state, as follows: Appendix No. 4, page——.

State of Mississippi, Oct. 1, 1933,	$ 41,205,750.00
Various counties of the State, Oct. 1, 1932,	$ 78,060,320.39
Various Municipalities Oct. 1, 1932	$ 42,672,877.01
Other taxing districts, levee boards, Oct. 1, 1932,	$ 6,260,000.00
Total	$168,198,947.40

The property, businesses and persons liable for the above bonds would be liable for the bonds in controversy in this suit, and in the event this court gives a judgment for plaintiff in this cause an additional liability of approximately Forty-two Million Dollars would thereby be established.

The granting of the motion for leave by this court would very seriously impair the market value of the said modern bonds and would cause irreparable injury and damage to the holders of such bonds. The purchasers of the modern bonds at the time of the purchase thereof had a legal right to believe that the holders and owners of the ancient bonds had abandoned all claims they may have had for same.

On account of the world-wide depression, the assessed valuation of property in the State of Mississippi has decreased very materially during the past several years. The total assessed valuation of all property within the state for ad valorem taxes for the fiscal years beginning with 1928 is as follows, to-wit:

For the fiscal year 1928	$775,716,077.00
For the fiscal year 1929	$774,877,211.00
For the fiscal year 1930	$742,504,531.00
For the fiscal year 1931	$692,655,464.00
For the fiscal year 1932	$578,822,240.00
For the fiscal year 1933	$555,188,726.00

The assessed valuation of real estate in the State for the fiscal years 1931 and 1932 was as follows:

For 1931	$474,315,155.00
For 1932	$393,689,578.00

In 1932 for the taxes of the fiscal year 1931, there was sold to the state real estate of the assessed value of $34,321,066.00, and in 1933 for the taxes for the fiscal year 1932 $30,727,951.00.

This statement does not include real estate sold to individuals for taxes.

In 1930, by reason of the loss in its revenues occasioned by the depression, although the governmental expenses of the state had been greatly reduced, the Legislature found that the revenues of the state would not be sufficient to pay its current expenses and the bonds outstanding and maturing. At its 1930 Session the Legislature enacted

Chapters 89 and 90, Laws of 1930, which levied a general sales tax on practically every kind of business carried on in the State of Mississippi.

This tax was a new tax to the state, one that had never been levied prior thereto.

In 1932 the general sales tax law was amended so as to increase the sales tax approximately 800 per cent. See Chapters 90, 91 and 92, Laws of 1932. This new tax produced approximately $4,540,196.71 in revenue from June 1st, 1932 to Oct. 1st, 1933.

Chapter 103, Laws of 1932 mandatorily directed the State Treasurer to impound all funds coming into the treasury on and after January 1st, until a sufficient amount was on hand to pay all bonds maturing prior to August 1932, and to follow the same procedure in 1933.

Chapter 110, Laws of 1932, authorized the issuance and sale of $4,500,000.00 in refunding bonds, the bonds to be refunded bearing interest at 3½, 4½ and 5 per cent. However, the Legislature authorized the refunding bonds to be sold to bear interest at the rate of 6 per cent. per annum and to be sold at 95 per cent. of their face value. The statute further provided that the state could accept maturing bonds bearing a lower rate of interest for the new bonds bearing 6 per cent. interest.

Chapter 111, Laws of 1932, authorized the sale of $8,000,000.00 in bonds and provided that such bonds might be sold so as to bear interest at the rate of 6 per cent. at 95 per cent. of the face value. These bonds were author-

ized to take up and pay all the then outstanding valid indebtednesses of the state which were running without interest.

The biennium appropriations made by the state for all purposes since 1928 were as follows:

For the years 1928 and 1929	$26,915,749.38
For the years 1930 and 1931	$29,982,147.10
For the years 1932 and 1933	$21,036,777.98

The state has sacrificed its public school system, its institutions of higher learning, its eleemosynary institutions, and is reducing its governmental expenses, and the homes of its people are being sacrificed in an effort to redeem its pledge of full faith and credit to its bond holders.

A judgment of this court holding these century-old bonds were valid, and the state was liable for their payment, would almost double the present outstanding indebtedness of the state.

The state, its counties, its municipalities and its other taxing districts, and the purchasers of its modern bonds had a right to believe and in fact did believe, that on account of the statute of limitations of the state and the laches of the holders of the ancient bonds, that all rights under said ancient bonds had been extinguished and the state would never be coerced to pay said bonds.

A judgment at this late date would destroy the credit of the state, render it unable to pay either the ancient bonds or its modern bonds, and would thereby cause irre-

parable injury and damage to the citizens of the said state and to the holders and owners of its modern bonds issued in good faith.

Yet plaintiff is attempting to bring this suit and cause the aforementioned damage without disclosing any reason or excuse for the unreasonable delay.

CONSTITUTIONAL PROVISIONS.

Section 5, Article 12, Constitution of 1869, provided as follows:

> "The credit of the State shall not be pledged or loaned in aid of any person, association or corporation; nor shall the state hereafter become a stockholder in any corporation or association."

By amendment No. 1, written into the Constitution in 1876, said section was amended by adding thereto the following:

> "Nor shall the state assume, redeem, secure, or pay any indebtedness or pretended indebtedness claimed to be due by the State of Mississippi, to any person, association or corporation whatsoever, claiming the same as owners, holders, or assignees of any bond or bonds, now generally known as Union Bank Bonds, or Planters' Bank Bonds."

The section, as amended, was incorporated in the Constitution of 1890 as Section 258 thereof.

If these provisions of the State Constitution were val-

id, then all the right, title and interest or property the bondholders at that time had in said bonds were defeated and extinguished, and the plaintiff at the time it received the bonds as a charitable donation from aliens acquired no right of action or property.

If said provisions of the Constitution were invalid by reason of being in violation of the "impairment of contract" clause of the Federal Constitution, then the holders of the bonds in 1876, when the Constitution of 1869 was amended, had access to the courts of the State of Mississippi to determine its invalidity, and if unsuccessful in the State Court, could have appealed to this Court and had the question determined by this Court.

This right existed for four years on and after the amendment of 1876, and failure of the bondholders in that time to take the necessary legal action to determine the validity of the bonds and the invalidity of the constitutional amendment constituted laches, and by reason thereof the bondholders lost all their rights in and to said bonds and plaintiff acquired nothing by the charitable donation to it.

But whether said constitutional provisions were valid or invalid they were the declarations of the State of Mississippi acting in its soverign capacity. After their enactment in 1876 and in 1890, no foreign state could accept said bonds as a charitable donation in good faith. They could only have accepted same for the purpose of attempting to create a controversy between such foreign state and the State of Mississippi.

A further evidence of the lack of good faith on the

part of the plaintiff is that the demand on the State of Mississippi addressed to the Governor thereof was dated New York, December 11, 1933. A letter transmitting a copy of the motion for leave and declaration was dated December 13th, 1933, and the motion for leave was actually filed on December 18th, 1933. Plaintiff well knew that these bonds could not be paid except by an act of the State Legislature. It further knew that the Legislature would convene in regular session on the 2nd day of January, 1934. The demand was for over a half million dollars, yet an attempt is made to bring suit prior to the convening of the Legislature even though plaintiff knew it would convene in less than one month after demand was made.

STALE CLAIMS.

The case of *State of Mississippi v. Johnson*, 53 Miss. p. 625, involved Bond No. 91-A of the series mentioned in counts No. 3 and 4 of the declaration. In its opinion, text page 725, the court held as follows:

> "Other claims, to the amount of many millions of dollars, exist against the State of Mississippi, of similar character, the validity of which depends upon precisely the same conditions with that which is the present subject of adjudication. So far, therefore, as the action of the judicial department is concerned, the decision which it is now our duty to pronounce, will, probably, be decisive of their fate. For that reason alone, the present contest is one of deep interest."

Of course, the same rule would apply in this case; that is, if this court holds the bonds valid and the State of Mis-

sissippi liable therefor, it would judicially determine the validity of all bonds of said issue mentioned in the declaration.

It is clear that the purpose of this proposed law suit is to get a judicial determination by this court of the validity of the entire issue of bonds generally known as the Planters Bank bonds and the Union Bank bonds, amounting to $7,000,000.00 par value, and interest of approximately $35,000,000.00. Such a judgment would clearly be for the benefit of all of the holders of such bonds.

At least, before the motion for leave is granted, the plaintiff should be required to make to this court a full and frank disclosure of how and upon what terms these bonds came into her possession, and what agreement she has, if any, with the other bond holders or their agents, so that this court may determine whether this suit is within the original jurisdiction of this court.

The purpose of the lawsuit is reflected by the following facts:

> First: A number of bonds of each and every issue were delivered to the plaintiff;
>
> Second: The declaration alleges that the bonds were donated to the plaintiff, but Exhibit "D" to the declaration and the action of the plaintiff in immediately bringing this suit indicates strongly, if not conclusively, that it was not a donation but a contract; that is, the plaintiff in consideration of the bonds delivered to it, agree to bring the suit for the benefit of the bond holders;

> Third: The record shows that the bond holders and plaintiff have closely followed the procedure in the case of *South Dakota v. North Carolina*, supra, and in fact, attorneys for plaintiff say in their brief that they have closely followed said case. It seems to have been admitted, or at least not controverted, by the parties in that case the purpose was to get a judgment of this court as to the validity of all the bonds issued.

Plaintiff may attempt to excuse the long delay, by saying that the holders of said bonds could not sue the state, but this could not be sustained as has been heretofore shown herein.

I submit, if the procedure followed here can be followed, then it is apparent that it could have been followed at any time since the maturity of the bonds. The South Dakota-North Carolina case relied upon, was decided in 1903. It has been more than 30 years since said decision. If the bond holders are willing to donate or pay $100,000.00 par value of said bonds now in order to get the question judicially determined by this court, then they could have done so years ago.

The arguments under headings "Statute of Limitations" and "Laches" are applicable but will not be repeated here.

For a long time this alleged claim has remained unasserted. The unexplained delay is of such great length as to render it difficult or impossible for the courts to ascertain the truth of the matters in controversy and do

justice between the parties. It has created a presumption against the existence or validity of the claim, or that the claim has been abandoned or satisfied.

It, therefore, conclusively appears that the claim of plaintiff, if any, has been for a long time barred by the statute of limitations, and there are no exceptions or saving clauses that could defeat the bar; that plaintiff and its predecessors in title, have been guilty of laches; that the claim is now a stale claim and plaintiff has no rights whatever thereunder; that not only the remedy but the right of action has been extinguished and defeated.

> "In such cases, either where the government is suing for the use and benefit of an individual, or for the prosecution of a private and proprietary instead of a public or governmental right, it is clear that it is not entitled to the exemption of nullum tempus, and that the ordinary rule of laches applies in full force. *United States v. Beebe*, 127 U. S. 338; *New Hampshire v. Louisiana*, 108 U. S. 76; *Maryland v. Baldwin*, 112 U. S. 490; *United States v. Des Moines, etc. Company*, 142 U. S. 510, 538; *Custner v. United States*, 149 U. S. 662; *United States v. American Bell Telephone Co.*, 167 U. S. 224, 264; *Miller v. The State*, 38 Alabama 600; *Moody v. Fleming*, 4 Georgia 115."

This Court may withhold relief from those who have delayed the assertion of their claims for an unreasonable length of time in the discretion of the Court, even though the laches be not pleaded, or the bill demurred to.

Sullivan v. Portland, etc. R. Co., 94 U. S. 806.

Richards v. McCall, 184 U. S. 183.

> "The long acquiescence of Indiana in the claim of Kentucky, the rights of property of private parties which have grown up under grants from that State, the general understanding of the people of both states in the neighborhood, forbid at this day, after a lapse of nearly a hundred years since the admission of Kentucky into the Union, any disturbance of that State in her possession of the island and jurisdiction over it."

State of Indiana v. State of Kentucky, 136 U. S. 479.

> "If the time for full payment given by the settlement of 1847 is subtracted, this suit was commenced nineteen years after the time fixed by that settlement for the last payment had passed. Limitation and laches forbid that this suit should be sustained."

Cressey, et al, v. Meyer, 138 U. S. 525.

CONCLUSION.

The original jurisdiction of this Court is dependent upon

First: The existence of the proper parties plaintiff and defendant; and

Second: The existence of a substantial justiciable controversy enforceable in favor of the party plaintiff.

We submit that we have shown:

1. That the Principality of Monaco is not a proper party in that it is not a "foreign state", and, therefore, not entitled to bring an original action in this Court.

2. That the State of Mississippi is not a proper party in that she is a sovereign State and not amenable to suit in this Court under the facts stated in the declaration.

3. There is no substantial justiciable controversy enforceable in favor of plaintiff and against the State of Mississippi for the reason that the facts alleged in the declaration show conclusively that both the alleged right and the remedy thereon had been defeated and extinguished for more than half a century prior to its alleged acceptance by the plaintiff.

We, therefore most respectfully submit that the motion for leave to file the declaration should be denied.

GREEK L. RICE,
Attorney General,

W. W. PIERCE,
Assistant Attorney General,

J. A. LAUDERDALE,
Assistant Attorney General.
Attorneys for the State of Mississippi.

APPENDIX NO 1

(TRANSLATION)
TREATY.

The President of the French Republic and His Serene Highness the Prince of Monaco, being desirious of confirming by a formal Act of mutual confidence the protective friendship which, in continuance of a happy tradition, the Principality has always encountered at the hands of the French Government, and whereas the interests of the Principality of Monaco are, on account of its geographical situation, necessarily bound up with those of France,

Have resolved to conclude a Treaty to that effect, and have appointed as their respective Plenipotentiaries:

The President of the French Republic: M. Stephen Pichon, Senator, Minister for Foreign Affairs of the French Republic;

And His Serene Highness the Prince of Monaco: Count Balny d'Avricourt, his Envoy Extraordinary and Minister Plenipotentiary to the President of the French Republic;

Who, duly empowered, have agreed on the following provisions:

Article I.

The Government of the French Republic assures to the Principality of Monaco the defence of its independence and sovereignty and guarantees the integrity of its territory as though that territory formed part of France.

The Government of His Serene Highness the Prince of Monaco undertakes, for its part, to exercise its rights of sovereignty entirely in accord with the political, military, naval and economic interests of France.

Article II.

Measures concerning the international relations of the Principality shall always form the subject of a prior understanding between the princely Government and the French Government.

This likewise applies to measures relating either directly or indirectly to the exercise of a Regency or to the succession to the Crown which may only be transmitted, whether through a marriage, by adoption or otherwise, to a person possessing French or Monegasque nationality and agreeable to the French Government.

Article III.

His Serene Highness the Prince of Monaco, in pursuance of the additional Articles of the Treaty of the 2nd February, 1861, confirms both on his own behalf and on that of his successors the undertaking given to the French Government not to alienate the Principality, either wholly or in part, in favour of any Power other than France.

In the event of the Crown falling vacant, especially in default of an heir, whether direct or adoptive, the territory of Monaco shall form, under the protectorate of France, an autonomous State called the State of Monaco. In such an event private immovable property not devoted to a public use which, on that account, might form the subject of a

special claim on the part of the rightful claimants, shall be repurchased by the State of Monaco with the aid, if necessary, of the French State.

Article IV.

The French Government may, either on its own initiative, with the assent of the Prince, or in an emergency, after notification, or at the request of His Serene Highness, cause to enter and remain in the territory and territorial waters of the Principality the military or naval forces required for upholding the security of the two countries.

Article V.

The French Government will lend its good offices to the princely Government in order to facilitate its admission, together with the French Government, to international conferences and institutions, and especially to those which have in view the organization of the League of Nations.

Article VI.

Special stipulations shall determine the arrangements to be made, notably in regard to the economic consequences of the Customs Union provided for by the Treaty of the 2nd February, 1861, the prosecution and prevention of fiscal frauds, of offences, misdemeanors and crimes of every kind, the organization of common public services, education, the recruitment of public officials, the status of foreigners, principally in respect of their naturalisation and their liability to taxation, the coordination of police measures, the supervision of frontiers, on the understanding that the princely Government alone is qualified, with the assent of

the French Government, if required, to enact provisions in regard to public order within the Principality.

Article VII.

The present Treaty shall, as soon as circumstances may permit, be brought to the notice of the Powers* By the French Government.

In faith of which the respective Plenipotentiaries have signed the present Treaty and affixed their seals thereto.

Done in duplicate at Paris, the 17th day of July, 1918.

(L. S.) S. PICHON.
(L. S.) BALNY D'AVRICOURT.

* In Article 436 of the Treaty of Peace between Great Britain and Allied and Associated Powers and Germany, signed at Versailles, June 28, 1919, the High Contracting Parties declared and placed on record that they had taken note of the Treaty.

NOTE: Translations taken from British and Foreign State Papers, 1917-1918, Volume CXI, pp. 727-728.

APPENDIX NO. 2

SUITS AGAINST THE STATE.

SEC. 1, ART. 2, CHAPTER 54 HUTCHINSON'S CODE 1797—1848.

AN ACT to designate in what manner, and in what Courts, suits may be brought against the State of Mississippi. Approved February 15th, 1833.

SECTION 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPI, That hereafter it shall be competent for any person, or persons, deeming him, her, or themselves, or body politic, to have a just claim against the state of Mississippi, to exhibit and file a bill in equity, in the Superior Court of Chancery, against the State of Mississippi; and the bill being so filed in the office of the said clerk, and at least thirty days before the first day of the ensuing term, and the complainant, entering into bond in behalf of the state of Mississippi, at the time of filing his bill, and in the sum of two hundred and fifty dollars, with two sureties in like sum, to be approved of by the said clerk, conditioned to indemnify the state against all costs; and also providing, that if the complainant shall fail to prosecute his suit, or to obtain a judgment or decree against the state, that then, and in either case, that the complainant and his sureties shall forthwith pay and satisfy to the clerk of said court, all such costs as may be incurred therein, that the complainant shall have and receive a transcript of said bill so filed, under the seal of the court, and signature of the clerk, and shall, within ten days thereafter, deliver the same to the attorney-general; and it shall be the duty of the attorney-general, on or be-

fore the third day of the ensuing term, to answer, defend, or demur to said bill. And provided it shall be necessary in the investigation of said case, to try any issue or issues of fact, that may be made up, then and in such case, the chancellor shall direct, according to the nature of the bill, in what circuit court of any county, said issue or issues shall be tried; and the clerk shall forthwith transmit an entire transcript of record herein, to the clerk of such circuit court, in which the said issue or issues is, or are to be tried, and the same being duly docketed, such issue or issues shall be tried, subject to the rules of law and regulations of said court; and the said issue or issues being tried, the verdict of the jury, shall be duly authenticated and certified to the superior court of chancery, and thereupon, such decree shall be had as will consist with law and equity; and the decree being so had, it shall be competent to the complainant, or the attorney-general, to appeal to the High Court of Errors and Appeals.

SECTION 1573, REVISED CODE OF MISSISSIPPI 1871.

The State of Mississippi shall be held liable to all persons whatever having claims, at law or in equity, against her, to the same extent as individual persons are liable to each other, and may be sued by any person having a cause of action, in the manner hereinafter provided; but no suit shall be maintained unless the claim has been demanded from the proper officer, and payment refused.

DUTY OF THE STATE AUDITOR OF PUBLIC ACCOUNTS.

SECTION 132, CODE OF 1871,
SECTION 218, CODE OF 1880,
SECTION 229, CODE OF 1892,

SECTION 239, CODE OF 1906,
SECTION 3727, CODE OF 1930.

It shall be the duty of the auditor to examine, state, settle, and audit all accounts, claims, or demands whatsoever against the state, arising under legislative authority, and to issue to every claimant authorized to receive the same a warrant on the state treasury, under his hand and seal of office, making due entry and registry of all proceedings in books to be kept for that purpose, and carefeully arranging, filing and preserving in his office all accounts, receipts, vouchers and papers touching the same.

SECTION 219, CODE OF 1880,
SECTION 230, CODE OF 1892,
SECTION 240, CODE OF 1906,
SECTION 3728, CODE OF 1930.

The auditor shall not draw warrants without, or in excess of appropriations of money by law for the purpose, except in those cases specially provided for by law.

(This section does not appear in the Code of 1871).

SECTION 2641, REVISED CODE OF MISSISSIPPI 1880.

Any person having a claim against the State of Mississippi, after demand made of the auditor of public accoun's therefor, and his refusal to issue a warrant on the treasurer in payment of such claim, may bring suit therefor against the state, in the court having jurisdiction of the subject matter, which holds its sessions at the seat of government of said state; and, if there be no such court at seat of government, such suit may be instituted in such court in the county in which the seat of government may be.

CHAPTER 131, SECTION 4248, ANNOTATED CODE OF MISSISSIPPI 1892.

Any person having a claim against the State of Mississippi, after demand made of the auditor of public accounts therefor and his refusal to issue a warrant on the treasurer in payment of such claim, may, where it is not otherwise provided, bring suit therefor against the state, in the court having jurisdiction of the subject-matter which holds its sessions at the seat of government; and if there be no such court at the seat of government,such suit may be instituted in such court in the county in which the seat of government may be.

SECTION 4800, CODE OF 1906, same as Section 4248, Code of 1892.

SECTION 5997, CODE OF 1930, same as Section 4248, Code of 1892.

SECTION 11, AN ACT TO APPROVE AND ADOPT THE REVISED CODE OF 1880.

"Sec. 11. BE IT FURTHER ENACTED, That the acts in said Code entitled 'an act in relation to public revenue', 'an act in relation to registration of persons entitled to vote,' 'an act in relation to elections,' shall take effect and be in force from and after the passage of this act, and from this date shall supersede all prior acts and parts of acts therein revised or repugnant to the provisions therein contained; and 'an act to divide the state into judicial districts for circuit and chancery courts,' and so much of 'an

act in relation to circuit courts,' and of 'an act in relation to chancery courts,' as changes the time of holding courts shall take effect and be of force on the first day of next July, and shall supersede other laws on the same subject."

SECTION 1, CHAPTER 1, REVISED CODE OF 1880.

"Sec. 1. The Revised Code of the Public statute Laws of the State of Mississippi shall consist of this Act, and the following entitled acts, to-wit: * * * * * *

"An act in relation to suits against the state.

* * * * * * *

"An act in relation to the limitation of actions.

* * * * * * *

"Sec. 2. The said acts, except as expressly provided, shall take effect on the first day of November, one thousand eight hundred and eighty, and from that day this code shall be received in use, and shall supersede all prior statutes and clauses therein revised, and hereby repealed.

APPENDIX NO. 3

CHAPTER 26, LAWS OF 1873, APPROVED APRIL 19, 1873.

SECTION 1. BE IT ENACTED BY THE LEGISIATURE OF THE STATE OF MISSISSIPPI, That all actions of debt or covenant, founded upon any bond, obligation, or contract, under seal or upon the award of arbitrators, shall be commenced within seven years next after the cause of such action accrued, and not after.

CODE 1871

CHAPTER 45

ARTICLE II.

PERSONAL ACTIONS.

Sec. 2151. All actions of debt, assumpsit, or on the case, founded upon any promissory note, bill of exchange, contract or liability, not under seal, express or implied, except actions founded upon open accounts; all other actions on the case, except actions for false imprisonment, malicious arrest, or for slanderous words and libels; all actions for waste and for trespass upon land; and all actions of detinue, trover, or other action for the recovery of personal property, or damages for taking, converting or injuring the same, shall be commenced within six years next after the cause of such action accrued and not after. All actions of debt or assumpsit, founded upon any open account, shall be commenced within three years next after the cause of such action accrued, and not after.

Sec. 2152. All actions for assault, battery, maiming, false imprisonment, malicious arrest or menace, and all actions for slanderous words concerning the person or title, and for libels, shall be commenced within one year next after the cause of such action accrued, and not after.

Sec. 2153. All actions of debt, founded on any judgment or decree, rendered by any court of record in this state, shall be brought within seven years next after the rendition of such judgment or decree, and not after; and no execution shall issue on any such judgment or decree, after seven years from the date of the issuance of the last preceding execution on such judgment or decree.

Sec. 2154. All actions of debt, founded on any judgment or decree, rendered by any court of record without the state, shall be brought within seven years after the rendition of such judgment or decree, and not after; provided, that if the person against whom such judgment or decree was, or shall be rendered, was or shall be at the time of the institution of the action, a resident of this state, such action, founded on such judgment or decree, shall be commenced within three years next after the rendition thereof, and not after.

Sec. 2155. No action or scire facias shall be brought against any executor or administrator, upon any judgment or other cause of action, against his testator or intestate, but within four years after the qualification of such executor or administrator.

Sec. 2156. If any person, entitled to bring any of the

actions before mentioned, shall, at the time at which the cause of such action accrued; be under any one or more of the following disabilities, that is to say; infancy, coverture, imprisonment, idiocy, lunacy, unsoundness of mind, or absence beyond the limits of the United States, on business of this state or of the United States, such persons may bring the said actions within the times in this chapter respectively limited, after such disability shall be removed.

CHAPTER XII

AN ACT in relation to Officers and other persons having Claims on the State Treasury.

SECTION I. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That every State Officer or other person entitled to receive money from the State Treasury shall present his claim for salary, services, or otherwise, to the proper auditing office and obtain his warrant for the payment of the same and also present such warrant for the payment to the State Treasurer, within three months after the rendition of such services, or the date that such salary, or any part thereof, or such indebtedness became due and payable; and unless such officer or person does so, the said claim for salary, services or indebtedness shall be considered and is hereby declared to be forfeited: Provided, That if any officer or other person, by death, sickness, or other unavoidable cause, shall fail to present his or her claim as hereinbefore provided, then he or they shall have an additional period of three months, after the removal of such cause, within which to present his or her said claim and have the same audited and registered. If such warrants cannot be paid at the time

the same are presented, the State Treasurer shall keep a record of their presentation, specifying names, dates, amounts, and for what purpose, and shall endorse such fact thereon; and as soon thereafter as moneys are in the treasury for the liquidation thereof, that officer shall immediately notify the officer or person to whom any warrant was issued of such fact; and shall also set aside in his office, according to such record of presentation, a sealed package containing the amount specified in such warrant, in the currency of the country, on hand in the treasury at the time said services were rendered, or said claim became due, payable to the holder of such warrant upon its presentation and surrender, which shall be held to satisfy said warrant, and the same shall be payable in no other funds or manner whatever.

SEC. 2: Be it further enacted, That the salary of any public officer, or the amount due any claimant, or any creditor of the State, shall be payable in the currency of the country when said salary, amount or indebtedness occurred.

SEC. 3: Be it further enacted, That Article forty-seven, section three, Chapter six of the Revised Code be, and the same is hereby amended so as to provide in addition that no receipt warrant shall be issued by the Auditor of Public Accounts for the payment of money into the treasury, unless that officer is fully satisfied that the money will be paid in the same day that the receipt warrant is issued; and that unless said money is so paid in upon that day, the receipt warrant shall be cancelled.

SEC. 4: Be it further enacted, That this Act shall take effect from and after its passage.

Approved November 29, 1865.

CHAPTER III.

AN ACT for the relief of certain creditors of the State.

SECTION I. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the Auditor of Public Accounts be, and he is hereby required to issue warrants upon the State Treasury for all legal claims against the state accruing since the sixteenth day of October eighteen hundred and sixty five, and which was declared forfeited by the Act entitled an act in relation to officers and other persons having claims on the State Treasury, approved November 29th, eighteen hundred and sixty-five; PROVIDED, Such warrants be obtained and presented to the State Treasurer on or before the First day of April, eighteen hundred and sixty-seven.

SECTION 2. BE IF FURTHER ENACTED, That this act take effect and be in force from and after the first day of January, eighteen hundred and sixty-seven.

APPROVED October 30, 1866.

SECTION 2685, CODE OF 1880,
SECTION 2755, CODE OF 1892,
SECTION 3115, CODE OF 1906,
SECTION 2313, CODE OF 1930.

The completion of the period of limitation herein prescribed to bar any action, shall defeat and extinguish the right as well as the remedy; but the former legal obligation shall be a sufficient consideration to uphold a new promise based thereon.

APPENDIX NO. 4

STATE OF MISSISSIPPI
OFFICE OF THE AUDITOR.

I, Joe S. Price, Auditor of Public Accounts of the State of Mississippi, do hereby certify that the official records in my office show the following facts,, to-wit:

1. That the outstanding bonded indebtedness of the State of Mississippi, its counties, municipalities, and other taxing districts, is as follows:

State of Mississippi, Oct. 1, 1933	$ 41,205,750.00
Various Counties of the State, Oct. 1, 1932	78,060,320.39
Various municipalities, Oct. 1, 1932	42,672,877.01
Other taxing Districts, Levee Boards, Oct. 1, 1932	6,260,000.00
Total	$168,198,947.40

2. That the total assessed valuation of all property within the State for the fiscal years beginning in 1928, up to and including 1933, is as follows, to-wit:

For the fiscal year 1928	$775,716,077.00
For the fiscal year 1929	774,877,211.00

For the fiscal year 1930 ..... $742,504,531.00

For the fiscal year 1931 ..... $692,655,464.00

For the fiscal year 1932 ..... $578,822,240.00

For the fiscal year 1933 ..... $555,188,726,00

3. That the assessed valuation of real estate in the State for the fiscal years 1931 and 1932 was as follows, to-wit:

For the fiscal year 1931 ..... $474,315,155.00

For the fiscal year 1932 ..... 393,689,578.00

4. That in 1932 for the taxes of 1931, and in 1933 for the taxes of 1932, real estate was sold to the State for taxes as follows, to-wit:

In 1932 ..... $34,321,066.00

In 1933 ..... $30,727,951.00

5. That the general sales taxes, amusement taxes and nuisance taxes from the date the laws levying same became effective, June 1st, 1932, to Sept. 30, 1933 produced the sum of ..... $ 4,540,196.71

6. That of the $4,500,000.00 in Refunding Bonds authorized by Chapter

110, Laws of 1932, there have been issued and sold ..... $ 2,050,000.00

That of the $8,000,000.00 in bonds authorized to be sold by Chapter 111, Laws of 1932, there have been issued and sold ..... $ 7,915,000.00

7. That the total biennium appropriations made by the State of Mississippi for all purposes since 1828, were as follows, to-wit::

For the biennium 1928-1929 ..... $ 26,915,749.38

For the biennium 1930-1931 ..... $ 29,982,147.10

For the biennium 1932-1933 ..... $ 21,036,777.98

Witness my hand and official seal this the 19th day of January, 1934.

JOE S. PRICE, State Auditor.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. ..... Original. At Law.

THE PRINCIPALITY OF MONACO,
Plaintiff,

v.

THE STATE OF MISSISSIPPI,
Defendant.

REPLY OF THE PRINCIPALITY OF MONACO TO THE ANSWER OF THE STATE OF MISSISSIPPI TO RULE TO SHOW CAUSE WHY THE MOTION OF THE PRINCIPALITY OF MONACO FOR LEAVE TO FILE ITS DECLARATION AGAINST THE STATE OF MISSISSIPPI SHOULD NOT BE GRANTED.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

THE PRINCIPALITY OF MONACO,
Plaintiff,

against

THE STATE OF MISSISSIPPI,
Defendant.

No. .....
Original.

REPLY OF THE PRINCIPALITY OF MONACO TO THE ANSWER OF THE STATE OF MISSISSIPPI TO RULE TO SHOW CAUSE WHY THE MOTION OF THE PRINCIPALITY OF MONACO FOR LEAVE TO FILE ITS DECLARATION AGAINST THE STATE OF MISSISSIPPI SHOULD NOT BE GRANTED.

The answer of the State of Mississippi to the rule to show cause apparently seeks to combine the effect of a demurrer, a plea to the jurisdiction, and a plea in bar with the discussion of other questions appropriate only to a trial on the merits after issue joined. It raises seven points to which plaintiff will reply in the order presented in the answer.

FIRST: The plaintiff is a "foreign state" within the meaning of Section 2, Article III of the Constitution.

That the Principality of Monaco is a foreign state, recognized by the United States Government, appears from the records in the office of the Secretary of State, constituting the political department of the Government. These records include the appointment of the Honorable Paul Fuller, Jr., of New York City, as Consul General of Monaco. A translation of the commission issued by the Principality to Mr. Fuller and a copy of the exequatur issued by the President of the United States are hereto attached and marked Exhibits 1 and 2 respectively. A copy of said exequatur certified under the seal of the Secretary of State, has been filed with this Court. Mr. Fuller is now acting as Consul General under the exequatur issued by the President of the United States.

In addition to the granting of an exequatur to Consul General Fuller, the Government of the United States has at the request of the representative of the Principality granted exequaturs to consuls of the Principality of Monaco located in the cities of Boston, Chicago and San Francisco. At the request of the Government of the United States an exequatur was granted to an American consul by the Principality of Monaco to represent the United States in the Principality.

Recognition of a foreign state may be effected in numerous forms. Written or oral declaration specifically granting recognition may be published, or recognition may be accorded by the exchange of diplomatic agents, the opening

of negotiations, or the granting of exequaturs to its consuls. (1 Moore International Law, 73.)

> "It is for the executive and legislative departments to say in what relations any other country stands toward it. Courts of justice cannot make the decision. Agency of Canadian Car Co. *v.* American Can Co., *supra;* Moore's International Law, vol. 1, p. 63."

Lehigh Valley R. Co. v. *State of Russia,* 21 F. (2) 396, 401, cert. denied 275 U. S. 571;
5 Wig. on Evidence (2nd Edition), 568;
Underhill v. *Hernandez,* 168 U. S. 250;
Oetjen v. *Central Leather Co.,* 246 U. S. 297.

See also:

Mighell v. *Sultan of Johore,* 1 Q. B. (1893), 149.

The defendant proceeds to argue that the Treaty attached as Appendix No. 1 to its brief destroys the sovereignty of the plaintiff. By the first Article of the Treaty it is provided:

> "The Government of the French Republic assures to the Principality of Monaco the defence of its independence and sovereignty and guarantees the integrity of its territory as though that territory formed part of France."

Admittedly, the Treaty places certain limitations upon the full exercise of its sovereignty by the plaintiff. This is true of every treaty in greater or less degree. The intent and purpose of this particular Treaty was to recognize the sovereignty of Monaco and to provide for the continued assurance of its independence. To say that this Treaty

destroyed plaintiff's sovereignty is to deny its whole intent. To say that a treaty which in some degree limits attributes of sovereignty destroys sovereignty would be to deny the sovereignty of many outstanding foreign states. Certainly under the rule contended for here the Constitution of the United States would completely destroy the sovereignty of the State of Mississippi.

The covenant of the League of Nations imposes upon the parties to it obligations not to exercise certain sovereign rights except in concert with or at the request of other members. Likewise by the Kellogg Pact each nation adhering renounces an immemorial attribute of sovereignty, the use of war as an instrument of national policy.

There can be no possible question that Cuba is now a sovereign state, but the Platt Amendment imposes definite restrictions on its rights. Under the Platt Amendment the treaty power of Cuba is restricted, the Government of the United States is authorized to intervene in the affairs of the Island, the military occupation of the United States is ratified, the United States is authorized to maintain naval bases in Cuba and the Isle of Pines is wholly omitted from the boundaries of Cuba.

Many similar situations could be cited to illustrate the fallacy of defendant's point.

Defendant cites no authority for its contention as to the limited definition of the words "foreign states" as used in §2 of Article III of the Constitution. Moore, in his work on International Law, in the chapter on "Definitions of the State" (1 Intern'l Law Dig. 14, *et seq.*) points out, at page 15 that:

> "It is a sound general principle, and one to be laid down at the threshold of the science of which

> we are treating, that international law has no concern with the form, character, or power of the constitution or government of a state, with the religion of its inhabitants, the extent of its domain, or the importance of its position and influence in the commonwealth of nations."

See *The Antelope,* 10 Wheaton, 66, in which Marshall, C. J., approved this principle of International Law:

> "No principle of general law is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights."

It is further stated by Moore (p. 19):

> "The sovereignty of the state does not preclude the assumption of obligations, by treaty or otherwise, or the existence of a servitude upon the territory of one state for the benefit of another."

External influence is not incompatible with sovereignty.

> "Thus, for example, the City of Cracow was recognized by the congress of Vienna in 1815 as a free state, independent and neutral, under the protection of Russia, Austria, and Prussia. Notwithstanding the powerful influence which those three powers were thus called upon to exercise over that state, Cracow did not cease to be considered as an independent nation in its international relations till 1846, when it was incorporated with the Empire of Austria, * * *." (1 Moore, p. 20.)

The treaty cited by the defendant is one guaranteeing the independence and sovereignty of the plaintiff. Such treaties are well known in international law.

Classification of states cannot be made by the extent of the sovereignty which each retains. The final criterion is

the recognition accorded to it by this country and the other nations of the world.

That the Principality of Monaco is a member of the general society of nations, and, as such, a party to agreements with the United States and other nations, fully appears from the following list of multipartite treaties to which both the United States and Monaco are parties:

(1) Agreement for the repression of the trade in white women, signed at Paris May 18, 1904. (Treaty Series No. 496.)

(2) Arrangement for the establishment of the International Office of Public Health, signed at Rome December 9, 1907. (Treaty Series No. 511.)

(3) Arrangement relative to the repression of the circulation of obscene publications, signed at Paris May 4, 1910. (Treaty Series No. 559.)

(4) International radiotelegraphic convention, signed at London July 5, 1912. (Treaty Series No. 581.)

(5) International convention and final protocol for the suppression of the abuse of opium and other drugs, signed at The Hague January 23, 1912, and July 9, 1913. (Treaty Series No. 612.)

(6) International sanitary convention, signed at Paris June 21, 1926. (Treaty Series No. 762.)

(7) International convention to suppress slave trade and slavery, signed at Geneva September 25, 1926. (Treaty Series No. 778.)

It is not of importance in the determination of this question, but as the suggestion has been made that this action is one involving international relations and that

therefore the consent of France must be obtained, the plaintiff desires to point out that this action does not concern a question of international relations, but constitutes a simple action of debt, and that the French Republic is not responsible for nor has it any interest in this suit or the subject-matter thereof.

Defendant in urging this point is taking a position wholly inconsistent with the argument which it makes on Page 14 of its answer, for there it states:

> "The suit at bar is not a quasi international difference, but a simple commercial suit on an assigned contract."

SECOND: The cases cited by plaintiff in its brief in support of its application for leave to sue fully sustain the points of law for which they are cited.

It is submitted that the cases cited by plaintiff in its brief fully substantiate the points for which they were cited, and no attempt will be made to re-state these points.

It appears in defendant's point II and in the other substantive points raised by it that its position is that the case of *South Dakota* v. *North Carolina*, 192 U. S. 286, was erroneously decided by a majority of this Court.

In almost every instance the arguments advanced by the defendant in this case were passed upon by the Supreme Court in the South Dakota case and were embodied in the dissenting opinion which was, nevertheless, overruled by a majority of the Court.

In its point II and in point VI the defendant makes the argument that an action of debt is not a "controversy"

within the meaning of the Constitution. This argument is wholly without merit.

The Supreme Court, as early as *Chisholm* v. *Georgia*, 2 Dallas 419, held that the word "controversy" covered every dispute of a civil nature. Justice Iredell in that case, after deciding that:

> "The Supreme Court hath, therefore, first, exclusive jurisdiction in every controversy of a civil nature: 1st. Between two or more states. 2nd. Between a state and a foreign state." * * *.

said:

> "The Constitution is particular in expressing the parties who may be the objects of the jurisdiction in any of these cases, but in respect to the subject-matter upon which such jurisdiction is to be exercised, uses the word 'controversies' only."

The Act of Congress before the Court in that action limited the word "controversies" in designating the powers of the Supreme Court by using the words "civil controversies," now 28 U. S. C. A. 341 (Judicial Code 233). This designation Justice Iredell held to be a fair exercise of Congressional power to define the language used in the Constitution, and held that except for reasonable definitions of this sort the word "controversies" must be deemed to be inclusive of all types of legal disputes.

See also:

Kentucky v. *Indiana*, 281 U. S. 163;

in which case the Court directed specific enforcement of a contract to build a bridge.

Kansas v. *Colorado*, 185 U. S. 125;
Missouri v. *Illinois*, 180 U. S. 208;

United States v. *North Carolina,* 136 U. S. 211; *Virginia* v. *West Virginia,* 206 U. S. 290; 220 U. S. 1; 238 U. S. 202; 241 U. S. 531; 246 U. S. 565.

The action of *United States* v. *North Carolina, supra,* was an action at law for recovery of money due to the United States on bonds of the State of North Carolina.

The only reason given for urging that this action on bonds of the State of Mississippi is not a justiciable one is the theory that execution cannot be issued against the State, and hence a court by entering a judgment for money would be doing a vain thing. This is not the law in the United States, and here as well as throughout the whole brief in order to substantiate its point defendant necessarily ignores the decisions of this Court, particularly *South Dakota* v. *North Carolina,* and *Virginia* v. *West Virginia, supra.* In the *South Dakota* case the Court held (p. 321) that the question of the decision of a claim for the payment of money was "directly presented." (See quotation from this decision, p. 15 of defendant's answer.) It also directly held (p. 321) that "the fact that this claim for the payment of money is one justiciable in its nature" made it a proper case for the Court's determination.

The whole question of the power of the Supreme Court to enforce its decrees against a State has been crystallized in *Virginia* v. *West Virginia,* 246 U. S. 565, in which Mr. Chief Justice White reiterated the doctrine of the power of the Court to enforce its decrees in the following language, at page 591:

> "That judicial power essentially involves the right to enforce the results of its exertion is ele-

mentary. *Wayman* v. *Southard,* 10 Wheat. 1, 23; *Bank of the United States* v. *Halstead,* 10 Wheat. 57; *Gordon* v. *United States,* 117 U. S. 697, 702. And that this applies to the exertion of such power in controversies between States as the result of the exercise of original jurisdiction conferred upon this court by the Constitution is therefore certain. The many cases in which such controversies between States have been decided in the exercise of original jurisdiction make this truth manifest. Nor is there room for contending to the contrary because, in all the cases cited, the States against which judgments were rendered, conformably to their duty under the Constitution, voluntarily respected and gave effect to the same. This must be unless it can be said that, because a doctrine has been universally recognized as being beyond dispute and has hence hitherto, in every case from the foundation of the Government, been accepted and applied, it has by that fact alone now become a fit subject for dispute."

The Court proceeded to determine two questions: First, that a judgment rendered against a State as such could be enforced against it, including the right, to the extent necessary for so doing, of exerting authority over the governmental powers and agencies possessed by the State; and Second, that there are appropriate remedies for such enforcement; and that these remedies are, (a) the power of Congress to legislate for the enforcement of the obligation, and (b) the exercise of remedies inherent in a court of law over any defendant amenable to it. The exact nature of the action to be taken was left for further consideration in the event that West Virginia should continue to refuse to carry out the judgment of the Court.

Further action was rendered unnecessary by compliance by West Virginia with the order of the Supreme Court.

When this case was previously before this Court (206 U. S. 290), the Court pointed out that it would not presume on demurrer

> "• • • that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted we can then consider by what means the decree may be enforced. Consent to be sued was given when West Virginia was admitted into the Union, and it must be assumed that the legislature of West Virginia would in the natural course make provision for the satisfaction of any decree that may be rendered" (p. 319).

See also:

Kentucky v. *Indiana, supra.*

At the close of Point II (defendant's Answer, p. 19) the defendant sets out seven particulars in which it claims the case of *South Dakota* v. *North Carolina* is distinguishable from the case at bar.

1. That this is a suit at law and not an action in equity to foreclose a lien. The distinction is not well founded. As has been pointed out, "controversies" include all controversies of a civil nature. The primary point is that both actions are on bearer obligations. As the Court stated in the *South Dakota* case, the question of a money judgment was "directly presented" (p. 321). The only difference in this regard between that case and the case at bar is that in the *South Dakota* case there was the additional factor of a lien to be foreclosed which required the action to be brought in equity rather than at law.

The facts definitely indicated that the equitable remedy would probably prove futile, and the dissenting opinion pointed this out (pp. 347-348).

2. That the North Carolina bonds were delivered to the donee prior to their maturity. That this was not the situation is evident from the record and the statement in Chief Justice White's dissenting opinion, at page 341:

> "It is unquestioned on the record that the bonds given to the State of South Dakota and upon which its action is based were past due at the time of the gift, and that for more than twenty years prior to the gift the State of North Carolina had, by her legislation, held herself not bound to pay the same. That these facts were known to the State of South Dakota when it accepted the gift is shown."

3. and 4. We are faced in this case with a Constitutional amendment of the State of Mississippi repudiating these bonds, a circumstance which is unique to Mississippi, and which, accordingly, did not exist in the North Carolina case. It is submitted that this amendment is a flat and explicit impairment of the contract sued upon, and as such a direct violation of Clause one, §10, Article I of the United States Constitution.

5. The right of the Principality of Monaco to sue is based upon exactly the same clause of the Constitution as that under which South Dakota sued. Therefore, the decision is directly in point.

6. As has been heretofore pointed out, the Principality of Monaco is a foreign state.

7. In North Carolina's answer in the *South Dakota* case it specifically raised the point that it had no agreement

with the State of South Dakota except that set out in the Constitution of the United States.

THIRD: The consent of the State of Mississippi is not necessary to give this Court jurisdiction over the causes of action set forth in the Declaration.

Here again we have a point that has been raised in this Court from the days of the argument in *Chisholm* v. *Georgia* down through the decisions in *Virginia* v. *W. Virginia*. That there has been a difference of opinion as to what the Constitution should have provided there is no doubt. The quotations from Madison, Marshall and others in the debates in the Constitutional Convention and prior to the ratification of the Constitution have been urged time and time again. Despite this fact, however, the Constitution provides that the judicial power shall extend to controversies between a State and foreign states, and that the Supreme Court shall have original jurisdiction over such controversies. The decisions of the Supreme Court cited above fully sustain the point that the word "controversies" includes all disputes of a civil nature. The cases cited further sustain the point that just as the States have given up the right to coin money, the right to make treaties, the right to enter into diplomatic relations, so they have given up the right to be free from suits in the specific cases provided for in the Constitution.

See also

Louisiana v. *Texas*, 176 U. S. 1;
Kansas v. *Colorado*, 206 U. S. 46.

That one of the States of the Union may be sued in the Supreme Court by a foreign state was expressly laid down as indisputable by both the prevailing and the dissenting opinions in *Cherokee Nation* v. *Georgia,* 5 Peters 1. Mr. Chief Justice Marshall said, at page 30:

> "The third article of the Constitution describes the extent of the judicial power. The second section closes an enumeration of the cases to which it is extended, with 'controversies' 'between a State or the citizens thereof, and foreign states, citizens, or subjects.' A subsequent clause of the same section gives the Supreme Court original jurisdiction in all cases in which a State shall be a party. The party defendant may then unquestionably be sued in this court. May the plaintiff sue in it? Is the Cherokee Nation a foreign state in the sense in which that term is used in the Constitution?"

Mr. Justice Thompson in the dissenting opinion, in which he disagreed with the majority of the Court that the Cherokee Nation was not a foreign state, said, at page 43:

> "That a State of this Union may be sued by a foreign state when a proper case exists and is presented, is too plainly and expressly declared in the Constitution to admit of doubt; * * *."

While it is true under the normal circumstances of sovereignty that those who deal in the bonds and obligations of a sovereign state must rely altogether on the sense of justice and good faith of the state, it is also true that those who deal with States of the United States have the further assurance granted by the Constitution and enforceable by the Supreme Court of the United States that a State of the United States will not pass legislation

impairing the obligation of contracts made by it. This is so whether the attempted impairment is by an act of legislature or by Constitutional amendment.

> *New Orleans Gas Light Co.* v. *Louisiana Light & Heat Producing & Mfg. Co.*, 115 U. S. 650;
> *Fisk* v. *Police Jury*, 116 U. S. 131;

See also,

> *Robertson* v. *Miller*, 276 U. S. 174;
> *Columbia Ry.* v. *South Carolina*, 261 U. S. 236;
> *Houston & Texas Cen. Ry.* v. *Texas*, 177 U. S. 66.

It is difficult to find a more definite form of "impairment of contract" than the Mississippi repudiation. Mr. Chief Justice Hughes, in the recent case of *Home Bldg. & Loan Assn.* v. *Blaisdell*, 54 S. Ct. Rep. 231, in which he discusses the cases on this subject, says:

> "The obligations of a contract are impaired by a law which renders them invalid, or releases or extinguishes them * * *."

Defendant argues that the Principality of Monaco accepted the bonds sued on impressed with the alleged equity in favor of the State of Mississippi created by the adoption of the Constitutional amendment. Under the obligations of the contract clause of the United States Constitution the State Constitutional amendment is void. The obligations of the contract clause protected the individual owners of the bonds. It assured them the right of exercising the dominion of an owner of the bonds to the extent of their terms which included the right to sell or donate the bonds to a third party. If it should be held that by reason of

Mississippi's repudiation Amendment the individuals could only pass a defective title to the Principality of Monaco, the result would be an impairment of the rights of the individuals to exercise one of the incidents of ownership.

The statement that neither the Principality of Monaco nor any other foreign state was a party to the compact of the States in the Constitution of the United States has, of course, nothing to do with the right of the plaintiff to come into this Court. That it may be the beneficiary of a provision of the Constitution whether or not it was a party to it is elementary. In addition to the right of a foreign state to sue under the original jurisdiction of the Court, the Constitution gives specific rights to ambassadors and consuls of foreign states, and these provisions are binding upon the several States. The States by the Constitution definitely agreed not to exercise certain sovereign rights in order that the purposes of the Union might be fulfilled. So also they agreed that they would permit suits against them in the Supreme Court in order that there might not be outstanding controversies among the States or between individual States and foreign governments that were in fact justiciable in nature. The cases cited in plaintiff's brief (pp. 4 and 5) on the motion for leave to sue fully dispose of the theory that because Monaco might withhold from the State of Mississippi the right to sue in its courts, the plaintiff cannot sue the State.

See also:

Lehigh Valley Ry. Co. v. *State of Russia, supra.*

FOURTH: The obligation of the State of Mississippi to pay its bonds is not an "agreement" or "compact" with a foreign power within the meaning of Section 10, Clause Three, Article I of the Constitution.

This point was raised in the case of *South Dakota* v. *North Carolina*. The contention of North Carolina in that case was that it had no agreement with the State of South Dakota other than the Constitution of the United States.

The defendant itself cites the cases of *Virginia* v. *Tennessee*, 148 U. S. 503; *Wharton* v. *Wise*, 153 U. S. 155, and *Stearns* v. *Minnesota*, 179 U. S. 223 (defendant's answer, p. 38), in which this Court has definitely held that the words "compacts" and "agreements" have substantially the same meaning as the words "treaty," "alliance" or "confederation." The "agreement" here does not arise out of an "agreement" or "compact" with a foreign power, but is a simple contract of debt arising from the issuance by Mississippi of a promise to pay a sum certain to the bearer of a bond issued in evidence of a pledge by the State of Mississippi of its full faith and credit to repay money received by it.

In this point again an attempt is made to link the Government of the French Republic to this action. The Principality of Monaco cannot too strongly impress upon this Court the complete divorcement of the Republic of France from any connection whatsoever with this litigation.

FIFTH: This action is not a subterfuge to evade the Eleventh Amendment to the Constitution.

Defendant's point V is wholly inapplicable to the case at bar. Defendant completely ignores the decision of this Court in *South Dakota* v. *North Carolina,* and builds up such argument as it may from the cases decided prior to it on facts substantially different. The facts here, as in the *South Dakota* case, are that an absolute gift has been made to plaintiff, and an action has been commenced against the State based upon the bonds forming the subject-matter of that gift. It is alleged, and will be proved, that the donors of said bonds have relinquished all title and control to said bonds and have no right to or interest in the proceeds of any judgment that may be entered in this case. The plaintiff, as the real party in interest, comes into this Court by reason of the provisions of the Constitution of the United States permitting foreign states who have controversies with States of the Union to have such controversies determined by this tribunal.

As plaintiff pointed out in its brief in support of its application for leave to bring this action, the Eleventh Amendment provides only that:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

It is manifest from this language that a suit by a foreign state is not within the purview of the Amendment.

SIXTH: The causes of action set out in the declaration are of a justiciable nature.

Defendant's Point VI has been discussed in connection with points SECOND and THIRD above (pp. 7-16), and it is unnecessary to answer it further, except, perhaps, to point out that the complete answer to the question of the right of the Supreme Court to enforce its judgment is fully determined by the case of *Virginia* v. *West Virginia, supra,* a quotation from which appears on page 9.

SEVENTH: No statute of limitations has run against the plaintiff or its predecessors, and neither the plaintiff nor its predecessors has been guilty of laches.

It is evident from an examination of defendant's brief that no statute of limitations began to run against the holders of these bonds until the effective date of the seven year statute of limitations adopted in 1873 (defendant's brief, pp. 63-64).

It is equally evident that the running of the statute was halted by the enactment of the Constitutional amendment in 1875, and that since then the State has estopped itself to plead the statute.

So long as this amendment appears as part of the Constitution of Mississippi it constitutes an exception to any right given by any statutes that may exist permitting the State to be sued, for it specifically provides that the State may not assume, redeem, secure or pay the very bonds in this action.

This result is also reached under the express provisions of Section 2307 of the Mississippi Code of 1930, which reads as follows:

> "STATUTE NOT TO RUN WHEN PERSON PROHIBITED TO SUE.—When any person shall be prohibited by law, or restrained or enjoined by the order, decree, or process of any court in this state from commencing or prosecuting any action or remedy, the time during which such person shall be so prohibited, enjoined or restrained, shall not be computed as any part of the period of time limited by this chapter for the commencement of such action."

It is obvious from a reading of Chapter XII, Laws of 1865 (defendant's answer, p. 64) that that law is not a statute of limitations affecting sealed instruments, but an administrative statute providing for the issuance of warrants against salaries and other claims for services rendered to the State.

The plaintiff in this action became the holder of these bonds in recent months, to wit, on September 26, 1933, and there certainly can be no contention (a) that it is guilty of laches, or (b) that any statute of limitations has run against it as it commenced its action in this Court by its motion for leave to file its declaration on December 18, 1933.

Normally, the doctrine of laches can be applied only in a suit in equity and not in an action at law, the general rule being that where the action is at law, in the absence of a specific statute applicable to the case, claims of the nature here in suit run indefinitely.

United States v. *Thompson*, 98 U. S. ~~154~~ 186:

> "The common law fixed no time as to the bringing of actions. Limitations derive their authority from statutes."

The defendant attempts to base its right to urge this Court to apply a doctrine of laches on the theory that the

"privilege of the plaintiff to sue in this Court is not a matter of right but purely a matter of grace—a matter that is entirely within the discretion of the Court" (defendant's answer, p. 73). That this is not the situation is evident from the decisions of this Court. This Court takes original jurisdiction only in actions to which such jurisdiction is extended by the Constitution, and in such cases it does so as a matter of right and not of grace.

See cases cited on page 5 of plaintiff's brief on its motion for leave to file its declaration, which include the statement of Mr. Justice Brewer in *Minnesota* v. *Hitchcock*, 185 U. S. 373, at page 385:

> "This Court cannot deny its jurisdiction in a case to which it is extended by the Constitution."

No statute of limitations is applicable to original actions in this Court. Statutes of limitation depend for their existence on municipal regulations founded on local policy which have no coercive authority elsewhere, and hence the general rule is that in respect to the limitation of actions the law of the forum governs. This Court has held in *Virginia* v. *West Virginia*, 220 U. S. 1, as follows:

> "The case is to be considered in the untechnical spirit proper for dealing with a quasi-international controversy, *remembering that there is no municipal code governing the matter* and that this court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the legislature of either state alone. Missouri *v.* Illinois, 200 U. S. 496, 519, 520. Kansas *v.* Colorado, 206 U. S. 46, 82-84. Therefore we shall spend no time on objections as to multifariousness, laches and the like, except so far as they affect the merits, with which we proceed to deal."

The defendant advances the curious argument that for this Court to declare valid the bonds in suit for which the full faith and credit of the State was pledged would adversely affect the "market value" of other bonds of the State, and that, as the State has elected to uphold one group of bonds, it would be inequitable to ask it now to stand by its earlier pledge. This is certainly not a serious contention of the State of Mississippi. To whatever extent the full faith and credit has been pledged for the later bonds, it is obvious that such pledge was made after the State had pledged its full faith and credit for the bonds in this suit, and that the subsequent bonds were issued with knowledge of the non-payment of the bonds in suit. There is no contention in the defendant's answer that the bonds in suit were not properly issued, and that the State did not receive the full face value of the bonds at the time of their issuance, and in view of the record no such statement could be made.

The defendant points out the short period between the demand for payment and the motion for leave to file its declaration in this action. The reason for this was, of course, that the demand was simply a formal prerequisite to the commencement of this action, and it was well known that the defendant would refuse to make such payment on the ground that its Constitutional amendment prohibited the payment of the bonds held by the plaintiff.

Defendant, on page 82, attempts to set up its theory of the actual purposes of this suit.

The purpose of this suit is made manifest by the declaration before this Court. As stated therein, the plaintiff is the sole and unconditional owner of $100,000 face value of the bonds of the State of Mississippi. The donors of the

bonds have no interest in said bonds or in any recovery that may be had in this action. The plaintiff sues to recover the amount due upon these bonds.

SUMMARY.

Plaintiff in replying to the answer of the defendant respectfully submits: (1) that a complete and sufficient showing of the jurisdiction of this Court to hear and determine the matters at issue was made out by the brief filed by the plaintiff on its motion for leave to sue; (2) that all major propositions raised by the answer are propositions which were made and fully argued by counsel and the dissenting opinion of the Court and answered by a majority of the Court in the case of *South Dakota* v. *North Carolina, supra;* and (3) that the remaining question of limitations is relevant only in an argument on the merits of this case or at some future stage of the proceedings, and has no bearing whatsoever on the granting of plaintiff's motion.

CONCLUSION.

The motion for leave to file the declaration should be granted.

Respectfully submitted this 5th day of February, 1934.

DEAN EMERY AND ETHELBERT WARFIELD,
Attorneys for The Principality of Monaco.

FREDERIC R. KELLOGG,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Of Counsel.

Exhibit 1.

(Translation of Commission of Consul-General)

(Archives of the Prince of Monaco)

Albert the First

By the Grace of God, Sovereign Ruler of Monaco, Desiring to extend and strengthen the friendly diplomatic and commercial relations obtaining between our country and the United States of America;

Has hereby appointed and doth appoint:

Mr. Paul Fuller as his consul-general in New York.

Therefore I order all my subjects to recognize him as such and I request His Excellency, the President of the United States of America, as well as the local authorities, to grant him the free exercise of the functions of his office and also the full enjoyment of consular privileges.

Witness my hand and seal and the counter-signature of my Secretary of State at my palace in Monaco this 10th of June in the year 1920, being the thirty-first of my reign.

Signed: Albert

Countersigned by
The Secretary of State
Fr. Roussel

(Seal of Monaco)

Exhibit 2.

(*Exequatur.*)

WOODROW WILSON
President

of the

UNITED STATES OF AMERICA

To all whom it may concern

Satisfactory evidence having been exhibited to me that

PAUL FULLER

has been appointed Consul General of Monaco at New York,

I do hereby recognize him as such, and declare him free to exercise and enjoy such functions, powers and privileges as are allowed to Consuls General by the law of Nations, or by the laws of the United States.

IN TESTIMONY WHEREOF I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

GIVEN under my hand at the City of Washington, the seventeenth day of September, A. D. 1920, and of the Independence of the United States of America, the 145th.

(signed) WOODROW WILSON.

{ Seal of the U. S. A. }

By the President:

(signed) BAINBRIDGE COLBY,
Secretary of State.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933.

No. ....., ORIGINAL. AT LAW.

THE PRINCIPALITY OF MONACO,

Plaintiff,

v.

THE STATE OF MISSISSIPPI,

Defendant.

SUPPLEMENTAL REPLY OF THE PRINCIPALITY OF MONACO IN ANSWER TO THE BRIEF AND ARGUMENT OF THE STATE OF MISSISSIPPI.

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SUPPLEMENTAL REPLY OF THE PRINCIPALITY OF MONACO IN ANSWER TO THE BRIEF AND ARGUMENT OF THE STATE OF MISSISSIPPI.

The argument of the State of Mississippi under the heading "Statute of Limitations" (Answer of Miss., pp. 55-72) is predicated upon the three following propositions:

1. It is assumed, without argument, that the applicable Statute of Limitations is that of the State of Mississippi.

2. It is not contended that any such statute has run against Monaco, but the contention is that it has run against Monaco's predecessors in interest.

3. It is argued that if the plaintiff's predecessors in interest were barred in Mississippi by the Statutes of Limitations of that State, then this plaintiff is barred in this Court.

The position of the plaintiff with respect to the foregoing may be summarized as follows:

1. The defense of the Statute of Limitations is to be determined by the law of the forum.

2. There is no Statute of Limitations applicable to cases of original jurisdiction brought before this Court.

3. Limitations derive their authority from statute, as the common law does not limit the time for the commencement of actions.

4. In so far as this action partakes of the nature of an international controversy there is no municipal code governing the matter, nor is there any limitation applicable to international controversies.

5. Even in Mississippi the rights of the plaintiff's predecessors in interest were never barred for the following reasons:

(a) The only Statute of Limitations of Mississippi affecting sealed instruments was adopted in 1873, the period of limitation being seven years.

(b) At that time the law of Mississippi tolled the statute if the commencement or prosecution of any action or remedy was restrained or prohibited by law.

(c) In 1876 the first amendment to Mississippi's Constitution was adopted which forbade the State to pay claims on the Union Bank Bonds or Planters' Bank Bonds.

This amendment was re-enacted as § 258 of the Constitution of 1890.

(d) The statutes in force since the maturity of these bonds, whereby Mississippi permitted suit to be brought against that State in its own courts, viz.: from 1850-1856 and from 1871-1880 were no more than auditing statutes. Enforcement of judgments against the State in such actions was expressly forbidden, the claimant being remitted to the legislature.

The logical sequence for the development of our position would doubtless be as above, but we shall depart from that order so as to meet at once the contentions of the State of Mississippi with respect to her own Statute of Limitations and the assumed applicability thereof.

We shall show that even the ineffectual right to sue the State was not available for long enough after Mississippi adopted its 7-year Statute of Limitations in 1873 for that statute to run against these claims, for the reason that whatever right of suit against the State had been theretofore available was completely destroyed by the Constitutional Amendment of 1876, which forbade the State to pay any indebtedness represented by the bonds in suit.

The effect of this Constitutional Amendment in rendering abortive any attempt to collect on these bonds is covered by the express language of the Statute of Mississippi then in force which provided that when any person was prohibited by law from commencing or prosecuting any action or remedy the Statute should not run against him.

For the convenience of the Court there is printed as Appendix A a "Timetable" setting forth the relevant dates involved in the consideration of the Statute of Limitations of Mississippi.

This we have followed with a chart or diagram marked Appendix B, which undertakes to present graphically the facts outlined in the "Timetable" printed as Appendix A.

These exhibits will enable the Court to see at a glance that the Statute of Limitations of Mississippi relied on by the defendant, enacted in 1873 and barring claims on sealed instruments after seven years, was tolled by the Constitutional Amendment of 1876, as respects the bonds in suit, after the Limitations statute had run but three years.

I.

Right of action on these bonds was never barred even in Mississippi.

Deferring for the present all questions as to the applicability of the Statutes of Limitations of Mississippi, let us at once deal with the merits of the contention that the plaintiff's assignors were ever barred in that State.

To state it conversely, let us see whether the holders of these bonds were ever in a position effectively to enforce their rights in Mississippi, by the recovery of a judgment which they were entitled to enforce and collect by effective legal process.

We submit that even during the short period when Mississippi submitted to suit in her own courts, as an act of grace, such right of suit carried with it no right *to enforce satisfaction.*

We shall presently refer to the Constitutional amendment of 1875-6* forbidding the payment of the bonds in suit, and to the provision of Mississippi law which tolled the Statutes of Limitations while there was any prohibition by law against the commencement or prosecution of any action or remedy.

But for the moment we are only concerned to inquire whether, irrespective of the Constitutional amendment and the tolling of the statute necessarily consequent thereon, there was in reality a complete right of recovery which the former holders of these bonds, plaintiff's assignors, could have asserted effectively to the point of having judicial process for the enforcement of their rights.

The answer is that they never did have any such right.

Manifestly, Mississippi could not be sued in her own courts without her consent.

As respects the Union Bank Bonds maturing in 1850, there were two periods during which Mississippi consented to be sued, viz.: 1850 to 1856 and 1871 to 1880 (Answer of Mississippi, pp. 56, 58).

The second group of Union Bank Bonds and both groups of Planters' Bank Bonds matured after 1856. As to them the right to sue the State was therefore limited to the period 1871-1880.

The Attorney General of Mississippi stated before the Court that as there was a default in interest on bonds of both issues in 1841, the holders of the bonds could have started suit as early as that year. It is submitted that as

---

* This amendment was submitted to the people and ratified November 2, 1875. In conformity with the constitutional provision in regard to the amendment of the Mississippi Constitution it was officially declared a part of the Constitution by the Legislature on January 18, 1876.

there is no acceleration clause in any of these bonds, there was no cause of action, except for the current interest payments, until maturity of the bonds.

> *Chicago, etc., R. R. Co.* v. *Fosdick,* 106 U. S. 47;
> *Armour* v. *Gas Co.,* 53 Fed. 2d 979 (C. C. A. 5th Cir.).

The law permitting suits against the State, in effect when the first group of Union Bank Bonds matured in 1850, continued until 1856. It was adopted in 1833.

> Act of February 15, 1833;
> Hutchinson's Mississippi Code of 1848, ch. 54, Art. 11.

That statute permits any person having a claim against the State to file a bill in equity in the Superior Court of Chancery. An amendment of 1846 permitted the Chancellor to order jury trials of issues of fact.

Section 3 of this article reads as follows:

> "No execution whatever shall ever issue on any decree in Chancery against the State of Mississippi whereby the State may be dispossessed of lands, tenements, goods and chattels."

Article 24 of the same Chapter provides:

> "Hereafter no judgment or decree of any court of law or equity having jurisdiction of suits against the State shall be paid by warrants on the Treasurer or otherwise without an appropriation by law, any former law or usage to the contrary notwithstanding."

From 1856 to 1871 Mississippi did not consent to be sued in her own courts. (See Answer of Miss., p. 58.)

When she did so consent in 1871 she still deprived the suitor of any right of enforcement.

The Revised Code of 1871, Chap. 18, §1580, contains the following:

> "Judgments and decrees against the State shall not be enforced in any other manner except by an appropriation made by the Legislature on the petition of the person holding such judgment or decree, accompanied by a duly certified copy of such judgment or decree."

The answer of Mississippi states (pp. 60, 64) that under the Code of 1880 and codes subsequent to said date, the holders or owners of these bonds did not have the right to sue the State.

These statutes, depriving a suitor of a right to enforce a judgment against the State by execution, have been construed by the highest courts of Mississippi.

In *Green* v. *The State*, 53 Miss. 148, 152, the Court discusses the difference between suits against the State and those against individuals. Of the former it says:

> "Such suits cannot be brought without being preceded by demand of payment and refusal; and, when they have ripened into judgments, *all steps for their satisfaction are prohibited*, except a request to the legislature for their payment. * * * It is evident that the judiciary acts in such a case merely as an appellate revisory board upon the action of the ministerial officer, or, perhaps more properly, as a court of claims, to determine the justice and legality of the demand." (Italics ours.)

In *State* v. *Raymond*, 54 Miss. 562, 564, the Court said:

> "Judgments and decrees shall not be enforced otherwise than by an appropriation by the legislature. § 1580. The purpose of the statute is to remit the creditor, after he has made demand of his claim from the proper ministerial officer, to the judicial tribunal, *not to enforce payment*, but to subject it to the scrutiny of the court, for the ascertainment of its legality and amount. • • •
>
> It is plain that the entire function of the court is to investigate and adjudicate the claim preferred against the State in a suit brought by the creditor. *When that is done, the power of the judiciary is at an end*, and satisfaction must be had by a legislative appropriation. • • • As we have seen, the State has not consented to any thing more than that the claim of its creditor shall be established by the judgment or decree of the court, *reserving to the political department the final determination of whether an appropriation shall be made. The legislature passes finally on the question of payment.*" (Italics ours.)

Statutes just such as these of Mississippi, by which a State consents to be sued but leaves the judgment-creditor to the bounty of the legislature, have been considered by this court in cases in which it was claimed that the repeal of such statutes deprived citizens of a State of constitutional rights. The decision of this Court was that since such statutes afforded no remedy, their repeal did not impair any right protected by the Federal Constitution.

Railroad Co. v. *Tennessee*, 101 U. S. 337;
Railroad Co. v. *Alabama*, 101 U. S. 832;
Baltzer v. *North Carolina*, 161 U. S. 240.

In the last cited case at page 243 the Court quoted at length from *Railroad Company* v. *Tennessee,* in part as follows:

> "The remedy, which is protected by the contract clause of the Constitution, is something more than the privilege of having a claim adjudicated * * *. It is needless to say that there is no remedy to enforce a contract if performance is left to the will of him on whom the obligation to perform rests. A remedy is only wanted after entreaty is ended. Consequently, that is not a remedy in the legal sense of the term, which can only be carried into effect by entreaty."

We submit that this disposes of the claim that the former individual owners of the bonds in suit ever had an enforceable remedy upon them in consequence of which they became barred by the running of any Mississippi statute of limitations.

It is certainly manifest from the foregoing that no statutes of limitations could ever be said to have run against the holders of these bonds. That is so because a statute of limitations presupposes in the nature of things that there should be a reasonable period of time during which suitors may assert their rights and prosecute their remedies to an effective conclusion.

> *Parmenter* v. *The State,* 135 N. Y. 154, at pp. 168-170.

The theory of prescription is that after the lapse of a given time the law *presumes payment.* That presumption must assume that the law has provided the suitor with some machinery for the assertion and collection of his

claims. It follows that there is no philosophic basis for a presumption of payment in the face of statutes which expressly forbid the taking of any steps to enforce payment of judgments.

Anticipating our discussion below of the Constitutional amendment of Mississippi, it follows, *a fortiori*, that there could be no presumption of payment *after the passage of that amendment*. Prior thereto it was at least optional with the legislature to make an appropriation in payment of judgments against the State, but after the adoption of the Constitution any such appropriation was forbidden by the organic law of Mississippi.

This abstract legal situation is dramatized for us in the case brought by *Hezron Johnson* v. *Mississippi* on the Union Bank Bonds in 1852. That case resulted in a judgment in Johnson's favor which was affirmed by Mississippi's highest court in April, 1853.

> *State of Mississippi* v. *Johnson*, 25 Miss. 625, at 769.

It was more than twenty years later that Mississippi adopted the Constitutional amendment forbidding payment. There was never any satisfaction of this so-called "judgment". The bond on which Johnson sued remains unpaid to this day. Johnson may have had a moral or intellectual satisfaction in his academic success. Material satisfaction he never received.

Bonds of the same issue and the same maturity are sued upon herein (Answer of Miss., p. 81).

In view of the statutes forbidding steps to satisfy judgments against the State, and in view of the Constitutional

amendment referred to below, it becomes scarcely more than academic to consider the general statute of limitations as affecting litigation between private suitors whose rights as between themselves were wholly unaffected by the statutes above referred to, or by the Constitutional amendment.

For the sake of completeness, however, we wish to point out that the only relevant statute (in effect from 1873 to 1880) was not only ineffective to bar a remedy with respect to a claim where the law *refused to provide any remedy*, but furthermore it was tolled, before it could run, by the Constitutional amendment.

For it is conceded (Miss. Answer, pp. 62, 63, 67-68) that there was no Mississippi statute of limitations with respect to sealed instruments until April, 1873, the period fixed being seven years. This statute is quoted in the answer of Mississippi (pp. 62, 96).

Since the statute did not undertake to bar the right, it is to be construed as barring the remedy only, under familiar rules of law.

> *Campbell* v. *Holt*, 115 U. S. 620;
> *United States* v. *Whyel*, 28 F. (2) 30 (C. C. A., 3).

The later Statute of 1880 barred the right as well as the remedy.

> Code of 1880, §2685 (Miss. Answer, p. 100).

But at the same time that Mississippi undertook to *bar* the right in 1880, it also *withdrew* from claimants against the State the privilege of *asserting* the right. As stated in Mississippi's brief (p. 64):

> "Under the Code of 1880, and codes subsequent to said date, the holders or owners of said bonds did not have the right to sue the state."

Now, except for the Constitutional amendment it was competent for the legislature, as an act of grace, to recognize and pay judgments against the State.

But as respects any judgment that might have been obtained *on these bonds,* that situation only existed from 1873 to 1876, a period far shorter than the relevant statute of limitations on sealed instruments, because after the adoption of the amendment to the Constitution in 1875-6, there was *no power* in the executive or legislative departments in Mississippi to recognize and pay any judgment on the bonds in suit. The amendment explicitly forbids it, providing that the State shall not—

> "assume, redeem, secure or pay any indebtedness * * * to any person, association or corporation * * * claiming the same as owners, holders or assignees * * * of Union Bank bonds, or Planters' Bank Bonds" (Miss. Br., p. 79).

This must be read in conjunction with the tolling statute (Sec. 2107, Code of 1871) which provides as follows:

> "STATUTE NOT TO RU[illegible]HEN PERSON PROHIBITED TO SUE.
>
> When any person shall be prohibited by law, or restrained or enjoined by the order, decree or process of any court in this state, from commencing or prosecuting any action or remedy, the time during which such person shall be so prohibited, enjoined or restrained, shall not be computed as any part of the period of time limited by this chapter for the commencement of such action."

This enactment is found in every code since that of 1857.

It would certainly be juggling with words to suggest that the Constitutional amendment which forbade payment of the bonds in suit was not such a restraint upon suit as to toll the statute.

A defendant who blocks the enforcement of a claim against him cannot be held to urge the Statute of Limitations.

Wilkinson v. *Flowers*, 87 Miss. 579, 587;
San Francisco Savings Union v. *Irwin*, 28 Fed. 708, 715 (decision by Stephen J. Field, C. J.), affd. *Irwin* v. *San Francisco Savings Union*, 136 U. S. 578;
Georgia R. R. Co. v. *Wright*, 124 Ga. 596, 628;
Wild v. *The People*, 92 Ill. App. 66;
Walker v. *Colby Wringer Co.*, 14 Fed. 523, 524.

In answer to this argument, Mississippi suggests that, despite the Constitutional amendment, it was still possible for a bondholder to sue Mississippi on the ground that the Constitutional amendment was in violation of the Federal Constitution.

But if a bondholder had sought to travel by this route he would have come out by the same door where in he went.

He would have started without any right to require the State of Mississippi to pay him anything except as an act of grace. The individual bondholder could not sue Mississippi in this Court, nor in any courts save those of Mississippi.

His right to sue and to collect in Mississippi would be dependent on the good will of that Sovereign State. Even if it consented to be sued in its own courts, it had never consented to submit to process to satisfy judgments against it.

If the courts of Mississippi had held the amendment to be unconstitutional as an impairment of the obligation of contract, then the bondholder would have obtained a judgment against the State.

Or, if the highest court of Mississippi had refused to override the Constitutional amendment and it had been overridden on appeal to this Court because in violation of the prohibition of the Federal Constitution against impairment of contract, then the bondholder would have become entitled to have a judgment entered against Mississippi *by the Mississippi Court* upon the mandate *of this Court.*

And in either case he would be back just where he started, a suppliant before the legislature of Mississippi.

And, even though its Constitutional amendment had been held thus for naught, the legislature could still have treated it as an expression of the popular will forbidding the appropriation of State monies in payment of these bonds.

The case of *County of Lincoln* v. *Luning,* 133 U. S. 529 (33 L. Ed., p. 767) disposes of the suggestion that the statute providing for the audit of claims by an Auditor of Public Accounts has any relevance. That case expressly approved *Greene Co.* v. *Daniel* (102 U. S. 187, 194; 26 L. Ed. 99, 101), holding that such statutes have application only to unliquidated claims and accounts *and do not apply to bonds and coupons.*

This is a complete answer to the statement in Mississippi's answer (p. 64) that the Planters' Bank Bonds sued on herein were barred in Mississippi by the Law of 1866 relating to auditing of claims for salary, services and otherwise before the State Auditor.

II.

Cases dealing with claims barred in the hands of plaintiff's assignors are not in point.

The gist of the claim of Mississippi, with respect to its own Statutes of Limitations, is that once a claim has been barred it cannot be revived by being transferred to an assignee. The brief of Mississippi says (p. 66):

> "It may be contended here that the statute of limitations does not run against the Principality of Monaco. However, this Court has held that where an obligation was transferred or assigned to the United States after the statute of limitations was completed that such statutes barred the United States."

In those cases it was claimed that the rights of the assignors *had been barred in the forum in which the assignee brought suit.* The contention advanced was that since the assignee was a sovereign, viz.: The United States of America, and since the statute of limitations does not run against a sovereign, therefore the assignee could sue in the same forum in which the assignor was already barred.

Thus in *U. S.* v. *Buford,* 3 Peters 12, the claim arose in Kentucky and was thereafter assigned to the United States by which suit was brought in the *Circuit Court of Kentucky.* If the assignor had brought such a suit in that court his claim would have been barred by the Statute of Limitations of Kentucky. It was therefore held that the United States, his assignee, was likewise barred.

In *United States* v. *Nashville &c. R. R.,* 118 U. S. 120, the suit was commenced by the United States in the Fed-

eral Circuit Court for the Middle District of Tennessee. The opinion cites *U. S.* v. *Buford* with approval, but the actual decision was that the Statute of Limitations of Tennessee had not run at the time the securities in suit were received by the United States.

These authorities would only be relevant if the courts of Mississippi were open today to a suit against the State of Mississippi on these bonds, and if this plaintiff were to institute suit thereon in its courts, as assignee of a party whose claim on these bonds had already been barred by the Statute of Limitations of that State.

Neither in this forum nor in any forum outside of Mississippi would the Statutes of Limitations of Mississippi, *ex proprio vigore,* be a bar to suit either by an original party or his assignee.

> "Foreign Statute of Limitations. If action is not barred by the statute of limitations of the forum action may be maintained, though action is barred in the state in which the cause of action arose."
>
> §632, The American Law Institute Restatement of the Law of Conflict of Laws (Tentative Draft No. 5, March 15, 1929).

III.

The defense of the Statute of Limitations is to be determined by the law of the forum.

Where the Supreme Court exercises original jurisdiction in a suit against a state the controversy has something of an international aspect. As a consequence the settled principles of international law apply.

There is no Statute of Limitations in international law or in this court.

We are now concerned only with the defense of limitations in actions at law. We shall refer later to the equitable defense of laches.

As to limitations this Court has said:

> "Whatever diversity of opinion there may be among jurists upon this point, we think it well settled to be a plea to the remedy; and consequently, that the *lex fori* must prevail."
>
> *M'Elmoyle* v. *Cohen,* 13 Peters, 312, 327.

Oddly enough, the question next arose where the cause of action accrued in Mississippi and suit was brought upon it in the State of Alabama. The defendant pleaded the Mississippi statute but a demurrer thereto was sustained on the express ground that this question was to be decided by the *lex fori* and not by the *lex loci contractus.* The Court cited *M'Elmoyle* v. *Cohen,* and said:

> "The rule in the courts of the United States, in respect to pleas of the statutes of limitation has always been, that they strictly affect the remedy, and not the merits. In the case of *McElmoyle* v.

Cohen (13 Peters, 312), this point was raised, and so decided. All of the judges were present and assented. The fullest examination was then made of all the authorities upon the subject, in connection with the diversities of opinion among jurists about it, and of all those considerations which have induced Legislatures to interfere and place a limitation upon the bringing of actions.

"We thought then, and still think, that it has become a formulary in international jurisprudence, that all suits must be brought within the period prescribed by the local law of the country where the suit is brought—the *lex fori;* otherwise the suit would be barred, unless the plaintiff can bring himself within one of the exceptions of the Statute, if that is pleaded by the defendant. The rule is as fully recognized in foreign jurisprudence as it is in the common law."

Townsend v. *Jemison,* 9 How. 407, 413.

See also:

Walsh v. *Mayer,* 111 U. S. 31;
Flowers v. *Foreman,* 23 How. 132.

There is no such statute with respect to original suits against States in this Court.

Virginia v. *W. Virginia,* 220 U. S. 1, 27.

If we are to apply to this controversy the rules of an action at law, then the absence of any statute is final.

"The common law fixes no time as to the bringing of actions. Limitations derive their authority from statutes."

United States v. *Thompson,* 98 U. S. 486.
25 L. Ed. 194, 195.

Reference is made in the answer of Mississippi (p. 65) to the *Conformity Act,* but that Act and the cases cited under it have no application to this Court or to this case.

Campbell v. *Haverhill,* 155 U. S. 610, was an action at law for infringement of a patent in the United States District Court for Massachusetts, and was brought when there was no Federal statute of limitations on such actions. The limitations of Massachusetts were applied, although it was argued that the law of the forum could only apply to matters within the jurisdiction of the State Courts, and that the Conformity Act would not be applicable to the instant case.

In *Bauserman* v. *Blunt,* 147 U. S. 647, this Court held that a Federal Court in Kansas, in an action on a promissory note, should apply the statutes of limitations of Kansas.

These citations confirm the proposition that the Federal Courts sitting in the various States apply the statutes of limitations of those States. But the Supreme Court does not sit in Mississippi. Nor does this case come here from a court sitting in Mississippi.

A leading case on *lex fori* and limitations is *Christmas* v. *Russell,* 5 Wall (72 U. S.) 290. In that case a judgment was obtained in Kentucky against a citizen of Mississippi. When the Kentucky action was brought, the Mississippi statute had run against the claim but that of Kentucky had not.

Suit was later brought in Mississippi on the Kentucky judgment. The defense was based on a Mississippi statute expressly providing that judgments recovered in other States against Mississippi citizens should not be enforced in Mississippi if the cause of action on which the judgment

was obtained would have been barred by the Mississippi statute of limitations.

This Court held the Mississippi statute unconstitutional as being an attempt to make the statutes of Mississippi operative in all the other States of the Union.

There is no Municipal Code nor any Statute of Limitations in international law or in this Court.

In *Virginia* v. *West Virginia,* the Court said:

> "The case is to be considered in the untechnical spirit proper for dealing with a *quasi-international controversy,* remembering that there is no municipal code governing the matter, and that this Court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the legislature of either State alone. *Missouri* v. *Illinois,* 200 U. S. 496, 519, 520. *Kansas* v. *Colorado,* 206 U. S. 46, 82-84. Therefore we shall spend no time on objections as to multifariousness, laches and the like, except so far as they affect the merits, with which we proceed to deal. See *Rhode Island* v. *Massachusetts,* 14 Peters 210, 257. *United States* v. *Beebe,* 127 U. S. 338." (Italics ours.)
>
> *Virginia* v. *W. Virginia,* 220 U. S. 1, at 27.

In *Kansas* v. *Colorado,* the Court said:

> "Nor is our jurisdiction ousted, even if, because Kansas and Colorado are States sovereign and independent in local matters, the relations between them depend in any respect upon principles of international law. *International law is no alien in this tribunal."* (Italics ours.)
>
> *Kansas* v. *Colorado,* 206 U. S. 46, at 97.

The foregoing opinion then proceeds to quote two earlier cases, as follows:

> "International law is part of our law and must be ascertained and administered by the courts of justice of an appropriate jurisdiction, as often as questions of right dependent upon it are duly presented for their determination."
>
> *The Paquete Habana,* 175 U. S. 677, 700.
>
> "Sitting, as it were, as an international, as well as a domestic tribunal, we apply Federal law, state law, and international law, as the exigencies of the particular case may demand * * *."
>
> *Kansas* v. *Colorado,* 185 U. S. 125, 146-7.

Our government, through its State Department, has taken the position that there is no statute of limitations as to international claims and has based its position on significant grounds, as will appear from the following quotation from the instructions of the Acting Secretary of State to our representative in Chile, October 13, 1884:

> "There is no statute of limitation as to international claims, nor is there any presumption of payment or settlement from the lapse of twenty years. Governments are presumed to be always ready to do justice, and whether a claim be a day or a century old, so that it is well founded, every principle of natural equity, of sound morals, requires it to be paid."
>
> Moore's International Digest, Vol. VI, §1052, page 1003.

It may well be that certain types of damage claims or unliquidated demands of an international character, which

the claimant has inexcusably failed to urge or present, ought to lose vigor or effect if the pressing of them is too long delayed.

In this case, however, we are dealing with the express obligation of a State to repay money borrowed upon its faith and credit. Moreover, it will be abundantly shown that payment of these bonds has been urged upon Mississippi throughout the entire period of default.

IV.

The pending motion for leave to sue is not the time for consideration of the claim of laches.

Ordinarily questions of laches and stale claims arise only in suits in equity. They are raised by the pleadings and developed by the proofs. Whenever that issue is so raised and presented herein, as an equitable defense or otherwise, the plaintiff will fully meet it.

There is sound reason for distinguishing between limitations and laches as to the stage of a litigation at which those respective issues may properly be dealt with.

In suits against a State this Court has expressed its willingness to permit the question of limitations to be raised by demurrer.

Clearly this is so because, statutes of limitations being rigid things, it can ordinarily be determined with precision when a cause of action accrues and when it becomes barred. If a clear case is presented on the face of the bill, from which it *conclusively appears* that a given statute of limitations will be *an absolute defense* if pleaded, then manifestly there is no reason for proceeding with the suit.

We trust we have established above that this is no such case.

But such preliminary consideration of the defense of laches is not appropriate for at least four reasons:

(a) Instead of a measuring rod we must use a slide rule in treating of laches and of stale claims.

(b) The Court can only determine how far the rule should slide in the light of the proven facts.

(c) These defenses call for proof that the delay worked to the definite prejudice of the defendant. That is not a matter of inference or of presumption. It is a matter of proof.

(d) In cases of original jurisdiction this Court declines to consider laches and like defenses except so far as they affect the merits.

Virginia v. *W. Virginia,* 220 U. S. 1, 27.

The merits are not to be determined upon an application for leave to sue, the Court is not apprised as to the merits.

The rule that laches does not depend on mere lapse of time, and that the delay must have worked injury, prejudice or disadvantage to defendant is well established.

Galliher v. *Cadwell,* 145 U. S. 368.

In a discussion which travels far outside the record the answer of Mississippi asks the Court to find that the holders of these bonds were guilty of laches, and that the claims are stale, without so much as giving the plaintiff a day in court.

When that day comes it will be shown that from the first default in the payment of interest in 1841 down to the

very commencement of this suit, the repudiation of these bonds by Mississippi has been diligently contested.

We annex hereto as Appendix C a partial chronology for the purpose of at least suggesting something of the efforts made on behalf of the bondholders in various ways and at various times to induce Mississippi to pay the obligations for which her faith was pledged.

The plaintiff herein will be prepared, when the time comes, to develop in an orderly fashion,—largely from Mississippi's own records,—the story of the efforts over the last eighty years to evoke from the authorities of that State even a tepid interest in the just claims of those persons and their successors who advanced money on the faith and credit of the State, repayment of which has been refused without so much as a pretense of excuse or justification.

In his oral argument the Attorney General of Mississippi apparently took substantially the position that by reason of the statutory provisions requiring a specific appropriation by the Legislature for any payment by the State, the original purchasers of the Bonds had no legally enforcible rights and were remitted solely to the pledge of Mississippi's faith and credit; that by the Constitutional amendment of 1876 repeated in the Constitution of 1890, Mississippi gave notice to the world that she repudiated her pledge and all subsequent holders of the Bonds therefore took them with notice that there was no faith or credit of Mississippi to which they could have recourse.

This argument can hardly commend itself to the conscience of the Court. If a State declares that it is bankrupt or on the verge of bankruptcy and therefore cannot presently pay its obligations there may be some grounds

for forbearance, leniency and readjustment, but when a State arbitrarily declares that it will not pay its obligations, the validity of which its own Courts have sustained, such obligation should be enforced by any tribunal of competent jurisdiction before which the case may be properly brought. Neither the declared repudiation nor any length of time that may have elapsed while the Bonds were in the hands of parties without capacity to sue should be permitted to prevent a competent Court from doing justice at the suit of a competent plaintiff.

Not only has pressure been brought to bear by the holders of these bonds, but it has been a matter of wide public interest, within and without the State of Mississippi, throughout banking and governmental circles in the United States as well as abroad.

In the answer of Mississippi (p. 73) reference is made to the first default in interest more than 90 years ago, and to the maturity of the bonds from 1850 to 1866, giving rise to an alleged cause of action on some bonds 93 years ago, and on all of them more than 67 years ago, the charge being that there is an unreasonable and unconscionable delay during some such extended period.

We leave it to counsel for Mississippi to reconcile those statements and their implications with the fact that no State can be sued without its consent, and that for upwards of 50 years last past, to quote the answer of Mississippi (p. 64):

> "the holders or owners of said bonds did not have the right to sue the State."

In the 83 years that have elapsed since the first series matured in 1850, the State of Mississippi has consented to be sued from 1850 to 1856, and again from 1871 to 1880.

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> "the holders or owners of said bonds did not have the right to sue the State."

In the 83 years that have elapsed since the first series matured in 1850, the State of Mississippi has consented to be sued from 1850 to 1856, and again from 1871 to 1880.

But before this latter period expired she adopted the Constitutional Amendment of 1876. This second period is the only one applicable to the other three maturities.

Thus the various periods suggested in the answer,—90 years, 83 years, 75 years or 67 years,—are found to have dwindled into one brief interval as to the last three maturities, with an additional brief interval as to the first maturity. This curtailment of the right of suit by affirmative action on the part of Mississippi in denying the privilege of asserting State claims which most other States gladly accord, had the result of reducing the maximum period when suit has been possible on the 1850 maturities to two periods, one of six years and one of seven years out of the last 83 years, while as to the later maturities, right of suit was available for only 9 years.

And this latter period of 9 years was curtailed to 5 years by the prohibitive terms of the Constitutional amendment in 1875-6.

The futilty of any suits in either period is illustrated in the case of *Johnson* v. *Mississippi* (*supra*), brought within two years after the first default (1852) and affirmed by Mississippi's highest court in the following year (1853).

This judgment, which was in full force and effect for over twenty years before the Constitutional amendment was enacted, has shared the fate of the bonds themselves. Both have been dishonored by a State which now seeks to avoid being called to account in a court in which it consented to be sued, on the ground that the claim is stale and that the rights of the plaintiff have been lost by laches.

This is no speculative action brought by the holders of bonds acquired for a fraction of their original worth, but

an action by a foreign state based upon bonds stated by the donors to

> "have been handed down from their respective families who purchased them at the time of their issue by the State of Mississippi."
>
> Letter dated September 26, 1933, from the donors of the bonds to the Minister of State of the Principality of Monaco, attached to plaintiff's declaration as Exhibit D.

Conclusion.

The motion for leave to sue and to file the Declaration should be granted.

Respectfully submitted this 9th day of March, 1934.

DEAN EMERY,
ETHELBERT WARFIELD,
Attorneys for The Principality of Monaco.

FREDERIC R. KELLOGG,
FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Of Counsel.

Appendix A.

TIMETABLE.

1833—All Planters' Bank Bonds in suit issued.

1833—Act adopted permitting individuals to sue the State of Mississippi.

1838—All Union Bank Bonds in suit issued.

1841—Default of *interest only* in both Planters' and Union Bank Bonds.

1850—First group of Union Bank Bonds matured as to principal.

1852-3—Judgment entered in favor of Hezron Johnson on Union Bank Bonds.

1856—Law permitting State to be sued repealed.

1858—Second group of Union Bank Bonds matured.

1861—First group of Planters' Bank Bonds matured.

1866—Second group of Planters' Bank Bonds matured.

1871—New statute adopted authorizing individuals to sue the State.

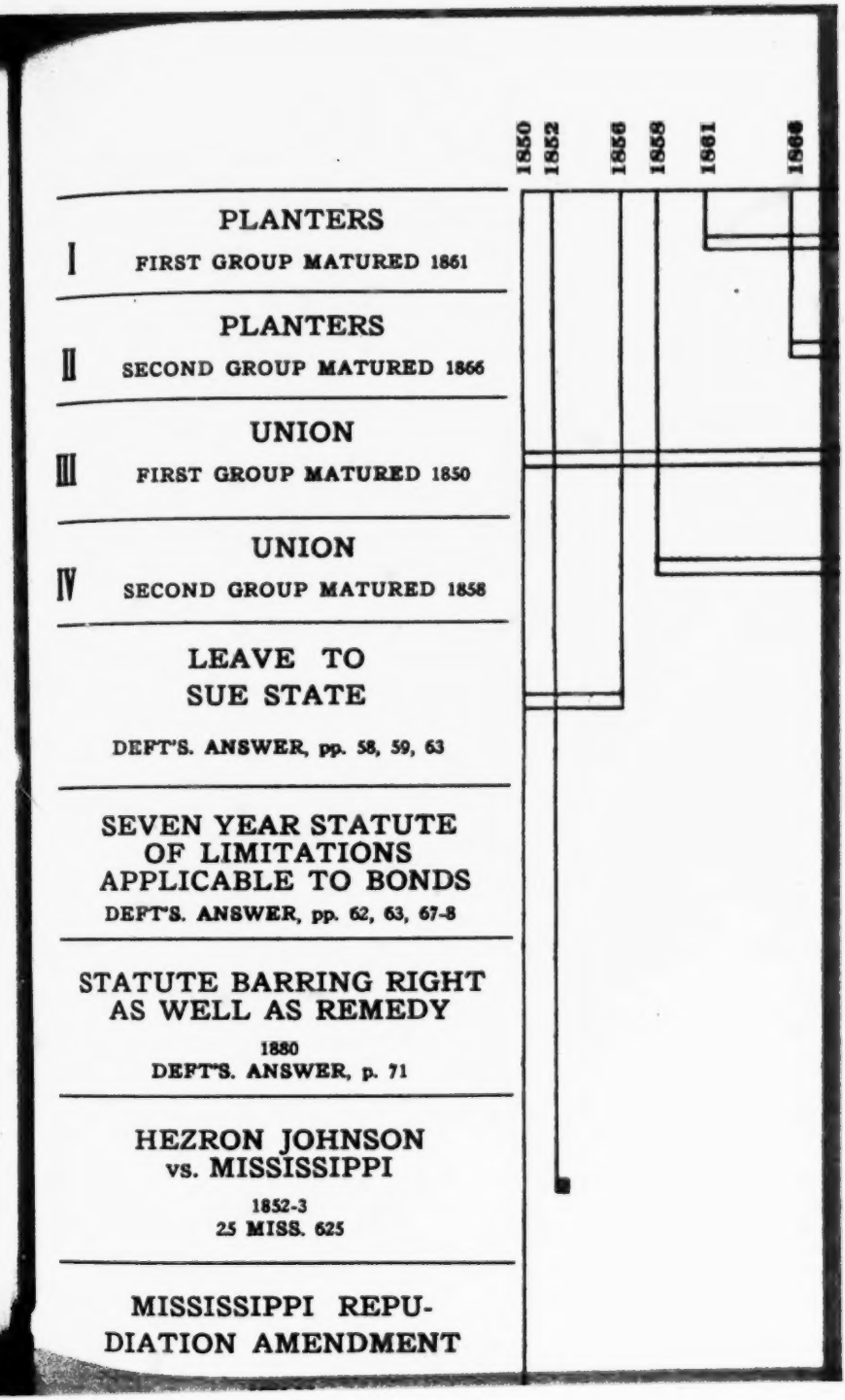
1871—Provision inserted in statute of limitations that if an individual is barred by the operation of law either from the right or remedy, the statute of limitations should not run against him.

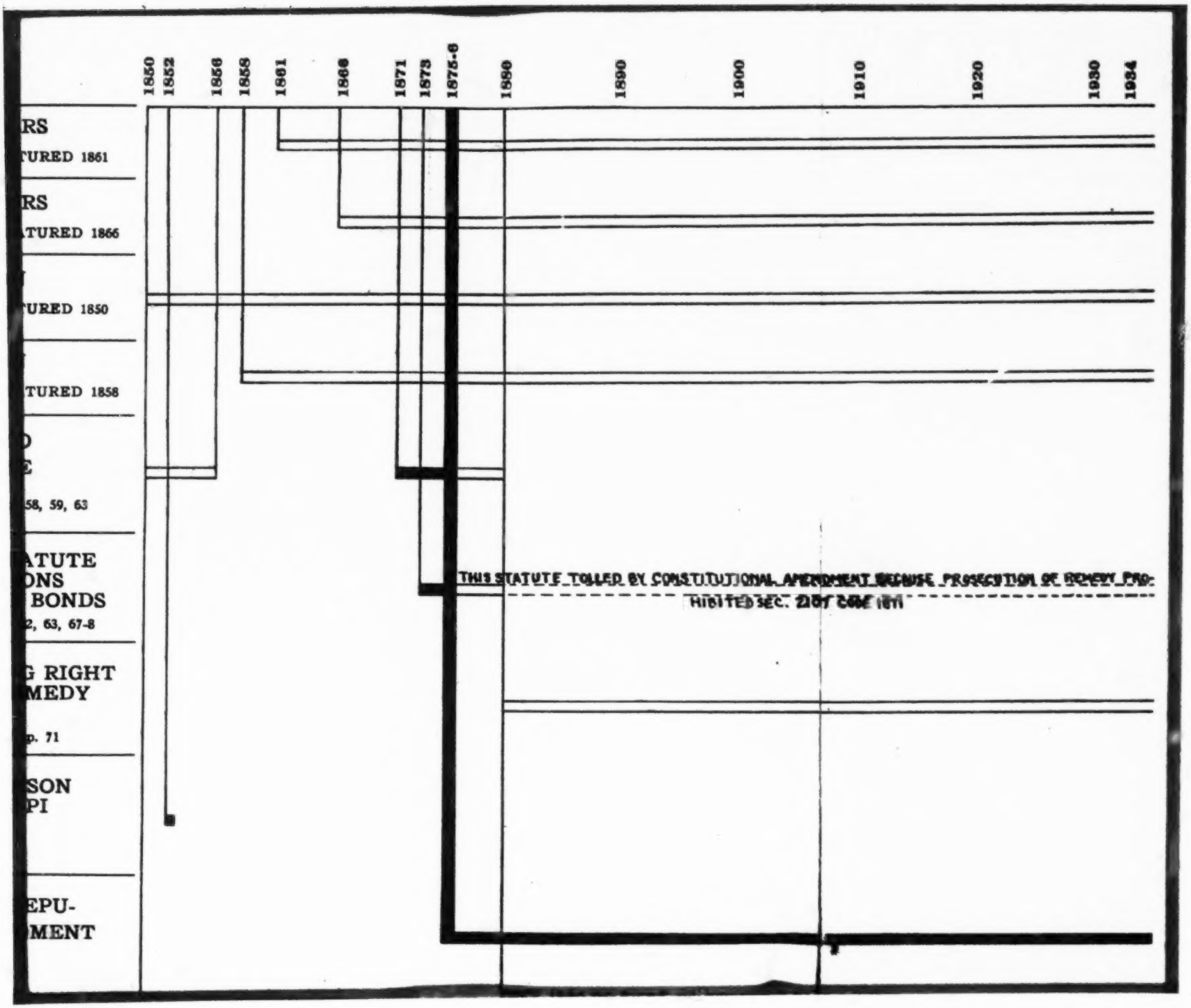
1873—Act passed fixing statute of limitations on sealed instruments. Period fixed, seven years.

1875-6—Constitutional amendment adopted prohibiting payment of Planters' and Union Bank Bonds.

1880—(a) Act adopted withdrawing right of individuals to sue the State of Mississippi.

(b) Statute of limitations made to bar the right as well as the remedy.


1850
1852
1856
1858
1861
1866
PLANTERS
I
FIRST GROUP MATURED 1861
PLANTERS
II
SECOND GROUP MATURED 1866
UNION
III
FIRST GROUP MATURED 1850
UNION
IV
SECOND GROUP MATURED 1858
LEAVE TO SUE STATE
DEFT'S. ANSWER, pp. 58, 59, 63
SEVEN YEAR STATUTE OF LIMITATIONS APPLICABLE TO BONDS
DEFT'S. ANSWER, pp. 62, 63, 67-8
STATUTE BARRING RIGHT AS WELL AS REMEDY
1850
DEFT'S. ANSWER, p. 71
HEZRON JOHNSON vs. MISSISSIPPI
1852-3
25 MISS. 625
MISSISSIPPI REPUDIATION AMENDMENT


1850
1852
1856
1858
1861
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TURED 1861
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58, 59, 63
ATUTE
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BONDS
2, 63, 67-8
G RIGHT
MEDY
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MENT
THIS STATUTE TOLLED BY CONSTITUTIONAL AMENDMENT BECAUSE PROSECUTION OF REMEDY PRO-
HIBITED SEC. 2107 CODE 1871

Appendix C.

Partial chronology with reference to the default by Mississippi in the payment of principal and interest of the Planters' Bank Bonds and the Union Bank Bonds, and to attempts made by various holders of the bonds to obtain payment:

1841.—First interest default of both Planters' Bank and Union Bank Bonds.

1850.—First group of Union Bank Bonds matured as to principal.

1852, December term.—A test case is brought for the holders of the Union Bank Bonds (filed 8th May, 1852) before the Mississippi Superior Court of Chancery, by Hezron A. Johnson, a Bondholder of New York City and results in a decree in his favor.

1853, April term.—The Supreme Court of Mississippi, upon appeal, unanimously affirms the decree. The Court declares the statutes relating to the issue of the Mississippi Union Bank Bonds to have been constitutional, and the bonds to have been sold as required by the supplementary Act, which Act, moreover, was itself only ancillary to the original Act. Campbell *v.* Union Bank, 6 How. 625, is cited and confirmed. (Chief Justice Smith, Justices Fisher and Yerger.) (State of Mississippi *v.* Hezron Johnson, 25 Miss. 625.)

1858.—Second group of Union Bank Bonds matured as to principal.

1858, 30th November-1859, 5th July.—Since default in interest, a total of $99,442 has been paid out of the sinking fund towards payment of Planters' Bank

Bonds and Coupons. On these two dates, by virtue of a mandamus of the Mississippi Supreme Court, further sums aggregating $101,520 are paid to Bondholders from the sinking fund, this being the balance of said fund then remaining. (Report of the Auditor of Public Accounts to the House of Representatives, 30th November, 1859.)

1859, 26th October.—American holders of Planters' Bank Bonds address a Memorial to the Governor and Legislature urging settlement of their claims by funding the interest past due and appropriating funds for payment of future interest. (*Bankers' Magazine,* Vol. 14, p. 861.)

1859, 15th November.—Governor McWillie in a Special Message announces that he has this year received several petitions from subjects of foreign countries and citizens of the United States, asking for settlement of the Planters' Bank Bonds. He states that owing to the increased value and amount of taxable property in the State, funds could now be appropriated, without any increased taxation, sufficient to provide for payment of the Bonds in 20 or 30 years. He urges their payment as an acknowledged debt of the State, declaring that it can never cost an individual or a State too much to be just. (*Bankers' Magazine,* Vol. 14, p. 510.)

1859, November.—By four votes to three a majority of the Joint Committee to whom the question of the above payment is referred, while not contesting the legality of the Bonds, considers it "impolitic" to agitate this matter at present because of the more important question of Federal relations. The House Chairman, Hon. W. C. Smedes, and two other members of the Committee, submit House Bill No. 11, asking for payment, and urge: "Whatever our political conditions, there is no reason

for the State not making provision for her just debt . . . The great State of Mississippi allows herself to be dishonored and discredited in the face of the world by failing to pay a just and admitted debt." (*Mississippi House Journal*, 1859, pp. 402-409.)

1861.—First group of Planters' Bank Bonds matured as to principal.

1867, February 7th.—George Peabody, banker and philanthropist, donates $464,000 Planters' Bank Bonds (principal amount) to his Southern Education Fund. Former Chief Justice and Provisional Governor, Hon. William L. Sharkey, assures Mr. Peabody and Hon. Robert C. Winthrop, Chairman, that the Planters' Bank Bonds are a just debt of the State and "are as good as gold . . . They must be paid."

1866.—Second group of Planters' Bank Bonds matured as to principal.

1871, February.—A Petition is received by the Mississippi Legislature on behalf of British, American, Dutch, Spanish and other investors in Mississippi Union Bank and Planters' Bank Bonds from Messrs. Baring Bros. & Co., N. M. Rothschild & Sons, F. Huth & Co., of London; Hope & Co., of Amsterdam; August Belmont & Co., Insinger & Co., and James G. King's Sons, of New York; also from Miller, Stoutenburgh & Peckham, New York, attorneys for many other individual holders. The petitioners urge that the State now "recognise as among its earliest and fundamental duties the enactment of a law which shall redeem the faith of Mississippi pledged upon these bonds, and free her forever from the bane of repudiation." They remind the Legislature that the investors pur-

chased the Bonds believing that the honour and good faith of Mississippi were as unquestionable as her resources were abundant, also that the liability of the Union Bank Bonds had been determined by the State's own Supreme Court.

1871, March.—The Trustees of the Peabody Southern Education Fund (Chairman, Hon. Robert C. Winthrop; Vice-Chairman, Hon. Hamilton Fish) address a Memorial dated 16th February, 1871, to the Mississippi Legislature appealing for the payment of the Planters' Bank Bonds, amounting with interest to $1,100,000 donated in 1867 by Mr. George Peabody, recalling that the validity of these bonds had never been questioned, and that it was the cherished hope and confident belief of the founder to the last hour of his life that this long-deferred debt would soon be provided for. (Proceedings of the Trustees of the Peabody Education Fund, 1872, pp. 6-7.)

1875, 12th February.—Governor Ames signs an amendment of the State's Constitution, proposed by him and passed by the Legislature, whereby to estop any further consideration of the Bondholders' claims. This amendment reads:

"Nor shall the State assume, redeem, secure or pay any indebtedness claimed to be due by the State of Mississippi to any person, association, or corporation whatsoever claiming the same as owners, holders, or assignees of any Bond or Bonds known as the Union Bank Bonds or the Planters' Bank Bonds."

(Encyclopedia of Mississippi History, Dr. Dunbar Rowland, Vol. I, p. 96.)

1878, February.—A British Committee, representing a majority of Planters' Bank and Union Bank Bond-

holders, address a proposal for settlement to the Governor and Legislature of Mississippi.

1880, 15th January.—The Memorial of the above British Committee is referred by the Senate to a Joint Committee of the Legislature.

1880, 2nd March.—The majority of the Joint Committee report unfavourably to settlement, invoking the referendum (against taxation therefor) in 1852 and the Constitutional Amendment ratified at the polls in 1875. (*Mississippi House Journal*, 1880, p. 512.)

1880.—Act adopted withdrawing right of individual to sue the State of Mississippi. Since this date no right exists for an individual to sue the State of Mississippi on bonds of the type in suit. (Answer of Mississippi, p. 60.)

1881, 21st February.—The Trustees of the Peabody Southern Education Fund again request payment of their Planters' Bank Bonds. (Peabody Trustees Proceedings, 1881, pp. 37-38.)

1882, January.—Mr. John T. Howard, representing the recently formed Mississippi Bondholders' Committee of the Council of Foreign Bondholders in London, proceeds to Jackson, Mississippi, with a Memorial asking for settlement.

1882, 27th January.—A motion to appoint a Joint Committee of the Legislature to confer with Mr. Howard, representing the above British Counsel, is defeated by 58 votes to 37 in the House. (*Mississippi House Journal*, 1882, p. 198.)

1882, 1st February.—A second Memorial from the Peabody Education Trustees is presented on the floor of the House of Representatives at Jackson, to the Mississippi Legislature, by Judge Manning of the

Board, who is introduced to the members by the Speaker. The Senate and the House both receive copies of the Trustees' Memorial, and each refers it to its respective Judiciary Committee. (Peabody Trustees Proceedings, 1882, p. 50.)

1890, 1st November.—The Mississippi Constitutional Convention incorporates the repudiation amendment adopted by the 1875 Legislature, into the new State Constitution as Section 258, Article XIV. (A motion to strike out the whole repudiating clause was introduced by General W. T. Martin, of Adams County, and seconded by five other members. Forty-four members of the Convention did not vote on the question, and the inclusion of the repudiation clause was passed by 84 votes to 6.) (*Journal of the* 1890 *Mississippi Constitutional Convention,* p. 520.)

1913, 5th November.—The Peabody Education Fund being about to be dissolved, after 44 years of assistance to Southern education, Governor Earl Leroy Brewer of Mississippi and Chancellor Kincannon of Mississippi University appear together in person at the annual meeting of the Trustees in New York, and request that the Peabody donation of Planters' Bank Bonds may be given to the said Universty. Peabody Trustees Proceedings, 1913, p. 13.)

1914, 20th May.—The Peabody Trustees agree to transfer their Planters' Bank Bonds to the University of Mississippi to be held in trust for four Southern Colleges, three in Mississippi (including the University) and the George Peabody College for Teachers in Nashville, Tennessee.

[The trust was accepted and the Bonds are now held by the State Treasurer of Mississippi pending ultimate distribution of their proceeds.]

1930, March.—A petition is addressed by Scottish holders of Mississippi Union Bank Bonds to every member of the United States Congress urging that "the State of Mississippi has set at naught and brought into contempt, the system of State Judicature, by her continued refusal to meet the judgments of her own highest Courts, and that she has likewise violated the Constitution of the United States [Article I, Section 10 (i)] by including in her present Constitution a law impairing the obligation of contracts."

1931, May.—The Committee of the Amsterdam Stock Exchange issues a Circular to its members concerning the claims of Dutch holders of Mississippi State Bonds.

1932, 9th February, 8th July and 19th December.—Letters and a cablegram are addressed by the Council to Governor M. S. Conner formally recording the continued existence of the Bondholders' claim.

FILE COPY

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1933

No. ....., Original. At Law.

THE PRINCIPALITY OF MONACO, Plaintiff,

VS.

THE STATE OF MISSISSIPPI, Defendant.

REPLY TO THE SUPPLEMENTAL REPLY OF PLAINTIFF.

GREEK L. RICE, Attorney General,
W. W. PIERCE,
Assistant Attorney General,
J. A. LAUDERDALE,
Assistant Attorney General,
Attorneys for State of Mississippi.

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Supreme Court of the United States

OCTOBER TERM 1933

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THE PRINCIPALITY OF MONACO, Plaintiff,

VS.

THE STATE OF MISSISSIPPI, Defendant.

REPLY TO THE SUPPLEMENTAL REPLY OF PLAINTIFF.

At the conclusion of the oral argument of this case the court, at the request of counsel for plaintiff, granted them leave to file a supplemental reply to the answer and brief filed by Mississippi. Counsel for Mississippi, assuming that counsel for Monaco would confine themselves to the record and law did not ask for leave to answer.

In view of the statement of fact, set forth in the supplemental reply, and especially in exhibit "C" (page 30, et seq.), counsel for the state beg leave to make and file the following reply, to-wit:

On page 22 counsel make the following statement:

"In this case, however, we are dealing with

the express obligation of a State to repay money borrowed upon its faith and credit. Moreover, it will be abundantly shown that payment of these bonds has been urged upon Mississippi throughout the entire period of default."

On page 24 they make the following statement:

> We annex hereto as Appendix C a partial chronology for the purpose of at least suggesting something of the efforts made on behalf of the bondholders in various ways and at various times to induce Mississippi to pay the obligations for which her faith was pledged."

It is to be presumed that counsel states the facts as strongly as possible in said Appendix C.

This appendix (page 34) shows that in 1881 "The trustees of Peabody Southern Education Fund again requests payment of their Planters' Bank Bonds" and in 1882 "Mr. John T. Howard, representing the recently formed Mississippi Bondholders' Committee of the Council of Foreign Bondholders in London, proceeds to Jackson, Mississippi, with a memorial asking for settlement."

It further appears that in 1882 requests were made by Mr. Howard and by the trustees of Peabody College for payment of a part of the issue of bonds. It does not appear that the bonds in controversy have ever been presented for payment.

It further appears that no other requests or petitions or memorials were made to the Legislature for the payment of any of the bonds, known as the Union Bank Bonds or Planters' Bank Bonds, unless it be said that in 1932, page 36, that the letters and cablegrams, addressed to Governor Conner "formally recording the continued existence of the bondholders' claim," was a request for payment.

This statement is placed in this reply brief by plaintiff for the express purpose of showing to this court what has been done by the bondholders in an attempt to secure the payment of the outstanding bonds. It does not appear that any of the bonds involved in this litigation have ever been presented, or that payment thereof has ever been requested.

It appears further that none of said bonds have been presented to the Legislature, or requests for payment thereof made from 1882, a short time after the claims were barred by the statute of limitations, until 1932, a period of fifty years.

Under the Code of 1880 the Governor and Legislature were elected every two years. Under the Code of 1892 the Governor and Legislature were elected every four years and the Governor was ineligible to immediately succeed himself.

It is therefore the contention of the State that shortly after the right, as well as the remedy, had been barred by the statute of limitations, the holders of these bonds made no effort to collect same for a period of more than fifty

years. In other words, they had abandoned their claims and said clams are now "stale claims."

We, therefore, submit that the motion for leave for filing declaration should be denied.

Respectfully submitted,

GREEK L. RICE, Attorney General,

W. W. PIERCE,
Assistant Attorney General,

J. A. LAUDERDALE,
Assistant Attorney General,

SUPREME COURT OF THE UNITED STATES.

No. — Original.—October Term, 1933.

The Principality of Monaco, Plaintiff,
vs.
The State of Mississippi, Defendant.

Motion for leave to file declaration.

[May 21, 1934.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The Principality of Monaco asks leave to bring suit in this Court against the State of Mississippi upon bonds issued by the State and alleged to be the absolute property of the Principality.

The proposed declaration sets forth four causes of action. Two counts are upon bonds known as Mississippi Planters' Bank Bonds, dated March 1, 1833, the first count being upon eight bonds of $1000 each, due March 1, 1861, and the second count upon two bonds of $1000 each, due March 1, 1866, all with interest at six per cent. per annum. The remaining two counts are upon bonds known as Mississippi Union Bank Bonds, the third count being on twenty bonds of $2000 each, dated June 7, 1838, due February 5, 1850, and the fourth count upon twenty-five bonds of $2000 each, dated June 6, 1838, due February 5, 1858, all with interest at five per cent. per annum. In each count it was alleged that the bonds were transferred and delivered to the Principality at its legation in Paris, France, on or about September 27, 1933, as an absolute gift. Accompanying the declaration and made a part of it is a letter of the donors, dated September 26, 1933, stating that the bonds had "been handed down from their respective families who purchased them at the time of their issue by the State of Mississippi"; that the State had "long since defaulted on the principal and interest of these bonds, the holders of which have waited for some 90 years in the hope that the State would meet its obligations and make payment"; that the donors had been advised that there was no basis upon which they could maintain a suit against Mississippi on the bonds, but that "such a suit could only be maintained by a foreign government or one of the United States"; and that in these circumstances the donors were making an uncon-

ditional gift of the bonds to the Principality to be applied "to the causes of any of its charities, to the furtherance of its internal development or to the benefit of its citizens in such manner as it may select".

The State of Mississippi, in its return to the rule to show cause why leave should not be granted, raises the following objections: (1) that the Principality of Monaco is not a "foreign State" within the meaning of Section 2, Article III, of the Constitution of the United States, and is therefore not authorized to bring a suit against a State; (2) that the State of Mississippi has not consented and does not consent that she be sued by the Principality of Monaco and that without such consent the State cannot be sued; (3) that the Constitution by Section 10, clause 3, Article I, "forbids the State of Mississippi without the consent of Congress to enter into any compact or agreement with the Principality of Monaco, and no compact, agreement or contract has been entered into by the State with the Principality"; (4) that the proposed litigation is an attempt by the Principality "to evade the prohibitions of the Eleventh Amendment of the Constitution of the United States"; (5) that the proposed declaration does not state a controversy which is "justiciable under the Constitution of the United States and cognizable under the jurisdiction of this Court"; (6) that the alleged right of action "has long since been defeated and extinguished" by reason of the completion of the period of limitation of action prescribed by the statutes of Mississippi; that the plaintiff and its predecessors in title have been guilty of laches, and that the right of action, if any, is now and for a long time has been stale.

The State contends that the holders of her bonds had a statutory right to sue the State by virtue of the Act of February 15, 1833 (Hutchinson's Code, 1798-1848, Chap. 54, Art. 11, Sec. 1; *State* v. *Johnson,* 25 Miss. 625); that by the operation of a constitutional amendment in 1856 abolishing the Superior Court of Chancery, and until the adoption of the Code of 1871, the State had no statutory provision authorizing suits against her (*Whitney* v. *State,* 52 Miss. 732); that the Code of 1871 (Sec. 1573) provided that the State might be sued and that Code had no statute of limitations in respect to bonds or contracts under seal; that a limitation of seven years as to actions upon such obligations was imposed by the Act

of April 19, 1873 (Laws of 1873, Chap. 26) and that the statute of limitations against the bonds in question began to run on that date; that the right to sue the State conferred by the Code of 1871 was taken away by the Code of 1880 which became effective on November 1st of that year (*Gulf Export Co.* v. *State,* 112 Miss. 452); that meanwhile, in 1876, the Constitution of the State was amended so as to provide that the State should not "assume, redeem, secure, or pay any indebtedness or pretended indebtedness claimed to be due by the State of Mississippi, to any person, association or corporation whatsoever, claiming the same as owners, holders or assignees of any bond or bonds, now generally known as Union Bank Bonds, or Planters' Bank Bonds", that this provision was incorporated in the Constitution of 1890 (Sec. 258), and that since its adoption no foreign State could accept the bonds in question as a charitable donation in good faith.

In reply to these objections, the Principality asserts that she is a foreign State recognized as such by the Government of the United States; that the consent of the State of Mississippi is not necessary to give the Court jurisdiction; that the obligation of the State of Mississippi to pay her bonds is not an agreement or a compact with a foreign power within Section 10, Clause 3, Article I, of the Constitution; that the action is not a subterfuge to evade the Eleventh Amendment; that the cause of action is justiciable; that no statute of limitations has run against the plaintiff or its predecessors and that neither has been guilty of laches. Upon the last-mentioned points the Principality urges that under the provisions of the statutes of Mississippi, holders of her bonds never had an enforceable remedy which could be said to be barred by the running of any state statute of limitations, and that the Principality will be prepared in the course of the suit to meet the defense of laches by showing the history of the efforts of the holders of the bonds to procure payment.

These contentions have been presented in oral argument as well as upon briefs. We find it necessary to deal with but one, that is, the question whether this Court has jurisdiction to entertain a suit brought by a foreign State against a State without her consent. That question, not hitherto determined, is now definitely presented.

The Principality relies upon the provisions of Section 2 of Article III of the Constitution of the United States that the judi-

cial power shall extend to controversies "between a State, or the Citizens thereof, and foreign States, Citizens or Subjects" (Clause one), and that in cases "in which a State shall be Party" this Court shall have original jurisdiction (Clause two). The absence of qualification requiring the consent of the State in the case of a suit by a foreign State is asserted to be controlling. And the point is stressed that the Eleventh Amendment of the Constitution, providing that the judicial power shall not be construed to extend to any suit against one of the United States "by Citizens of another State, or by Citizens or Subjects of any Foreign State", contains no reference to a suit brought by a foreign State.

The argument drawn from the lack of an express requirement of consent to be sued is inconclusive. Thus there is no express provision that the United States may not be sued in the absence of consent. Clause one of Section 2 of Article III extends the judicial power "to Controversies to which the United States shall be a Party". Literally, this includes such controversies, whether the United States be party plaintiff or defendant. *Williams* v. *United States,* 289 U. S. 553, 573. But by reason of the established doctrine of the immunity of the sovereign from suit except upon consent, the provision of Clause one of Section 2 of Article III does not authorize the maintenance of suits against the United States. *Williams* v. *United States, supra;* compare *Cohens* v. *Virginia,* 6 Wheat. 264, 411, 412; *Minnesota* v. *Hitchcock,* 185 U. S. 373, 384, 386; *Kansas* v. *United States,* 204 U. S. 331, 341, 342. And while Clause two of Section 2 of Article III gives this Court original jurisdiction in those cases in which "a State shall be Party", this Court has no jurisdiction of a suit by a State against the United States in the absence of consent, *Kansas* v. *United States, supra.* Clause two merely distributes the jurisdiction conferred by Clause one, and deals with cases in which resort may be had to the original jurisdiction of this Court in the exercise of the judicial power as previously given. *Duhne* v. *New Jersey,* 251 U. S. 311, 314.

Similarly, neither the literal sweep of the words of Clause one of Section 2 of Article III, nor the absence of restriction in the letter of the Eleventh Amendment, permits the conclusion that in all controversies of the sort described in Clause one, and omitted from the words of the Eleventh Amendment, a State may be sued

without her consent. Thus Clause one specifically provides that the judicial Power shall extend "to *all* Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority". But, although a case may arise under the Constitution and laws of the United States, the judicial power does not extend to it if the suit is sought to be prosecuted against a State, without her consent, by one of her own citizens. *Hans* v. *Louisiana,* 134 U. S. 1; *Duhne* v. *New Jersey, supra,* p. 311. The requirement of consent is necessarily implied. The State has the same immunity in case of a suit brought by a corporation created by Act of Congress. *Smith* v. *Reeves,* 178 U. S. 436. Yet in neither case is the suit within the express prohibition of the Eleventh Amendment. Again, the Eleventh Amendment mentions only suits "in law or equity"; it does not refer to suits in admiralty. But this Court has held that the Amendment does not "leave open a suit against a State in the admiralty jurisdiction by individuals, whether its own citizens or not". *Ex Parte State of New York, No. 1,* 256 U. S. 490, 498.

Manifestly, we cannot rest with a mere literal application of the words of Section 2 of Article III, or assume that the letter of the Eleventh Amendment exhausts the restrictions upon suits against non-consenting States. Behind the words of the constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character. There is also the postulate that States of the Union, still possessing attributes of sovereignty,[1] shall be immune from suits, without their consent, save where there has been "a surrender of this immunity in the plan of the convention". The Federalist, No. 81. The question is whether the plan of the Constitution involves the surrender of immunity when the suit is brought against a State, without her consent, by a foreign State.

The debates in the Constitutional Convention do not disclose a discussion of this question. But Madison, in the Virginia Convention, answering objections to the ratification of the Constitution, clearly stated his view as to the purpose and effect of the provision

[1]See Briscoe v. Bank of Kentucky, 11 Pet. 257, 321; Darrington v. Bank of Alabama, 13 How. 12, 17; Beers v. Arkansas, 20 How. 527, 529; In re Ayers, 123 U. S. 443, 505.

conferring jurisdiction over controversies betwween States of the Union and foreign States. That purpose was suitably to provide for adjudication in such cases if consent should be given but not otherwise.[2] Madison said: "The next case provides for disputes between a foreign state and one of our states, should such a case ever arise; and between a citizen and a foreign citizen or subject. I do not conceive that any controversy can ever be decided, in these courts, between an American state and a foreign state, without the consent of the parties. If they consent, provision is here made". 3 Elliot's Debates, 533.

Marshall, in the same Convention, expressed a similar view. Replying to an objection as to the admissibility of a suit by a foreign state, Marshall said: "He objects, in the next place, to its jurisdiction in controversies between a state and a foreign state. Suppose, says he, in such a suit, a foreign state is cast; will she be bound by the decision? If a foreign state brought a suit against the commonwealth of Virginia, would she not be barred from the claim if the federal judiciary thought it unjust? The previous consent of the parties is necessary; and, as the federal judiciary will decide, each party will acquiesce". 3 Elliot's Debates, 557.[3]

Hamilton, in The Federalist, No. 81, made the following emphatic statement of the general principle of immunity: "It is inherent in the nature of sovereignty not to be amenable to the suit of an

[2]There is no question but that foreign States may sue private parties in the federal courts. King of Spain *v.* Oliver, 2 Wash. C. C. 431; The Sapphire, 11 Wall. 164. In the latter case the court said (pp. 167, 168): "Our own government has largely availed itself of the like privilege to bring suits in the English courts in cases growing out of our late civil war. Twelve or more of such suits are enumerated in the brief of the appellees, brought within the last five years in the English law, chancery, and admiralty courts. There are numerous cases in the English reports in which suits of foreign sovereigns have been sustained, though it is held that a sovereign cannot be forced into court by suit". (Cases cited.) In Kingdom of Roumania *v.* Guaranty Trust Co., 250 Fed. 341, the court held that the bringing of an action by a foreign nation in a court of the United States to recover a deposit placed to its credit in a bank was not a waiver of its immunity as a sovereign from suit by other parties, and hence that the court was without jurisdiction to permit the defendant by interpleader to substitute as defendant another party claiming a lien on the deposit as a creditor of the plaintiff. See, also, Columbia *v.* Cauca Co., 190 U. S. 524; Ex parte Muir, 254 U. S. 522.

[3]See Story on the Constitution, sec. 1699; Willoughby on the Constitution (2d ed.), sec. 885.

individual *without its consent.* This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States, and the danger intimated must be merely ideal. The circumstances which are necessary to produce an alienation of State sovereignty were discussed in considering the article of taxation and need not be repeated here. A recurrence to the principles there established will satisfy us that there is no color to pretend that the State governments would by the adoption of that plan be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith. The contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretensions to a compulsive force. They confer no right of action independent of the sovereign will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident it could not be done without waging war against the contracting State; and to ascribe to the federal courts by mere implication, and in destruction of a pre-existing right of the State governments, a power which would involve such a consequence would be altogether forced and unwarrantable".[4]

It is true that, despite these cogent statements of the views which prevailed when the Constitution was ratified, the Court held, in *Chisholm* v. *Georgia,* 2 Dall. 419, over the vigorous dissent of Mr. Justice Iredell,[5] that a State was liable to suit by a citizen of another State or of a foreign country. But this decision created such a shock of surprise that the Eleventh Amendment was at once proposed and adopted. As the Amendment did not in terms apply to a suit against a State by its own citizen, the Court had occasion, when that question was presented in *Hans* v. *Louisiana, supra* (a case alleged to arise under the Constitution of the United States), to give elaborate consideration to the application of the general

[4]For statements by Madison and Marshall in the Virginia Convention in relation to the non-suability of States by individuals, see 3 Elliot's Debates, 533, 555.

[5]For comment upon the force of this dissent, see Hans *v.* Louisiana, 134 U. S. 1, 12, 14; Williams *v.* United States, 289 U. S. 553, 574, 576, 577.

principle of the immunity of States from suits brought against them without their consent. Mr. Justice Bradley delivered the opinion of the Court and, in view of the importance of the question, we quote at length from that opinion to show the reasoning which led to the decision that the suit could not be maintained. The Court said (134 U. S. pp. 12 *et seq.*): "Looking back from our present standpoint at the decision in *Chisholm* v. *Georgia*, we do not greatly wonder at the effect which it had upon the country. Any such power as that of authorizing the federal judiciary to entertain suits by individuals against the States, had been expressly disclaimed, and even resented, by the great defenders of the Constitution, whilst it was on its trial before the American people". After quoting the statements of Hamilton, Madison and Marshall, the Court continued: "It seems to us that these views of those great advocates and defenders of the Constitution were most sensible and just; and they apply equally to the present case as to that then under discussion. The letter is appealed to now, as it was then, as a ground for sustaining a suit brought by an individual against a State. The reason against it is as strong in this case as it was in that. It is an attempt to strain the Constitution and the law to a construction never imagined or dreamed of. Can we suppose that, when the Eleventh Amendment was adopted, it was understood to be left open for citizens of a State to sue their own state in the federal courts, whilst the idea of suits by citizens of other states, or of foreign states, was indignantly repelled? Suppose that Congress, when proposing the Eleventh Amendment, had appended to it a proviso that nothing therein contained should prevent a State from being sued by its own citizens in cases arising under the Constitution or laws of the United States: can we imagine that it would have been adopted by the States? The supposition that it would is almost an absurdity on its face.

"The truth is, that the cognizance of suits and actions unknown to the law, and forbidden by the law, was not contemplated by the Constitution when establishing the judicial power of the United States. . . .

"The suability of a State without its consent was a thing unknown to the law. This has been so often laid down and acknowledged by courts and jurists that it is hardly necessary to be formally asserted. It was fully shown by an exhaustive examina-

tion of the old law by Mr. Justice Iredell in his opinion in *Chisholm* v. *Georgia;* and it has been conceded in every case since, where the question has, in any way, been presented, even in the cases which have gone farthest in sustaining suits against the officers or agents of States".

The Court then adverted to observations of Chief Justice Marshall in *Cohens* v. *Virginia,* 6 Wheat. 264, which favored the argument of the plaintiff in error, but as those observations were unnecessary to the decision in the case of *Cohens,* the Court was of the opinion that they should not "outweigh the important considerations referred to which lead to a different conclusion".[6]

The same principle of immunity was reiterated and applied by the Court, upon the authority of *Hans* v. *Louisiana,* in *Smith* v. *Reeves, supra,* in deciding that a federal corporation could not sue a State without her consent, although, as we have seen, such a suit was not listed in the specific prohibitions of the Eleventh Amendment.

In the case of *South Dakota* v. *North Carolina,* 192 U. S. 286, 318, the Court observed that the expression in the opinion in *Hans* v. *Louisiana* of concurrence in the views announced by Mr. Justice Iredell in his dissenting opinion in *Chisholm* v. *Georgia,* could not be considered as a judgment of the Court, in view of the point which *Hans* v. *Louisiana* actually decided. But *South Dakota* v. *North Carolina* did not disturb the ruling in *Hans* v. *Louisiana* or the principle which that decision applied. *South Dakota* v. *North Carolina* was a suit by one State against another State and did not present the question of the maintenance either of a suit by individuals against a State or by a foreign State against a State. As a suit by one State against another State, it involved a distinct and essential principle of the constitutional plan which provided means for the judicial settlement of controversies between States of the Union, a principle which necessarily operates regardless of the consent of the defendant State. The reasoning of the Court in *Hans* v. *Louisiana* with respect to the general principle of sovereign immunity from suits was recently reviewed and approved in *Williams* v. *United States, supra.*

The question of that immunity, in the light of the provisions of Clause one of Section 2 of Article III of the Constitution, is thus

[6]See Missouri *v.* Illinois, 180 U. S. 208, 240; New Hampshire *v.* Louisiana, 108 U. S. 76.

presented in several distinct classes of cases, that is, in those brought against a State (a) by another State of the Union; (b) by the United States; (c) by the citizens of another State or by the citizens or subjects of a foreign State; (d) by citizens of the same State or by federal corporations; and (e) by foreign States. Each of these classes has its characteristic aspect, from the standpoint of the effect, upon sovereign immunity from suits, which has been produced by the constitutional scheme.

1. The establishment of a permanent tribunal with adequate authority to determine controversies between the States, in place of an inadequate scheme of arbitration, was essential to the peace of the Union. The Federalist, No. 80; Story on the Constitution, sec. 1679. With respect to such controversies, the States by the adoption of the Constitution, acting "in their highest sovereign capacity, in the convention of the people", waived their exemption from judicial power. The jurisdiction of this Court over the parties in such cases was thus established "by their own consent and delegated authority" as a necessary feature of the formation of a more perfect Union. *Rhode Island* v. *Massachusetts,* 12 Pet. 657, 720; *Louisiana* v. *Texas,* 176 U. S. 1, 16, 17; *Missouri* v. *Illinois,* 180 U. S. 208, 240, 241; *Kansas* v. *Colorado,* 185 U. S. 125, 142, 144; 206 U. S. 46, 83, 85; *Virginia* v. *West Virginia,* 246 U. S. 565.

2. Upon a similar basis rests the jurisdiction of this Court of a suit by the United States against a State, albeit without the consent of the latter. While that jurisdiction is not conferred by the Constitution in express words, it is inherent in the constitutional plan. *United States* v. *North Carolina,* 136 U. S. 211; *United States* v. *Texas,* 143 U. S. 621, 644, 645; 162 U. S. 1, 90; *United States* v. *Michigan,* 190 U. S. 379, 396; *Oklahoma* v. *Texas,* 258 U. S. 574, 581; *United States* v. *Minnesota,* 270 U. S. 181, 195. Without such a provision, as this Court said in *United States* v. *Texas, supra,* "the permanence of the Union might be endangered".

3. To suits against a State, without her consent, brought by citizens of another State or by citizens or subjects of a foreign State, the Eleventh Amendment erected an absolute bar. Superseding the decision in *Chisholm* v. *Georgia, supra,* the Amendment established in effective operation the principle asserted by Madison, Hamilton, and Marshall in expounding the Constitution and advocating its ratification. The "entire judicial power granted by

the Constitution" does not embrace authority to entertain such suits in the absence of the State's consent. *Ex parte State of New York, No. 1, supra,* p. 497; *Missouri* v. *Fiske,* 290 U. S. 1, 25, 26.

4. Protected by the same fundamental principle, the States, in the absence of consent, are immune from suits brought against them by their own citizens or by federal corporations, although such suits are not within the explicit prohibitions of the Eleventh Amendment. *Hans* v. *Louisiana, supra; Smith* v. *Reeves, supra; Duhne* v. *New Jersey, supra; Ex parte State of New York, No. 1, supra.*

5. We are of the opinion that the same principle applies to suits against a State by a foreign State. The decision in *Cherokee Nation* v. *Georgia,* 5 Pet. 1, is not opposed, as it rested upon the determination that the Cherokee nation was not a "foreign State" in the sense in which the term is used in the Constitution. The question now before us necessarily remained an open one. We think that Madison correctly interpreted Clause one of Section 2 of Article III of the Constitution as making provision for jurisdiction of a suit against a State by a foreign State in the event of the State's consent but not otherwise. In such a case, the grounds of coercive jurisdiction which are present in suits to determine controversies between States of the Union, or in suits brought by the United States against a State, are not present. The foreign State lies outside the structure of the Union. The waiver or consent, on the part of a State, which inheres in the acceptance of the constitutional plan, runs to the other States who have likewise accepted that plan, and to the United States as the sovereign which the Constitution creates. We perceive no ground upon which it can be said that any waiver or consent by a State of the Union has run in favor of a foreign State. As to suits brought by a foreign State, we think that the States of the Union retain the same immunity that they enjoy with respect to suits by individuals whether citizens of the United States or citizens or subjects of a foreign State. The foreign State enjoys a similar sovereign immunity and without her consent may not be sued by a State of the Union.

The question of the right of suit by a foreign State against a State of the Union is not limited to cases of alleged debts or of obligations issued by a State and claimed to have been acquired by transfer. Controversies between a State and a foreign State may

involve international questions in relation to which the United States has a sovereign prerogative. One of the most frequent occasions for the exercise of the jurisdiction granted by the Constitution over controversies between States of the Union has been found in disputes over territorial boundaries. See *Rhode Island* v. *Massachusetts, supra*, p. 737. Questions have also arisen with respect to the obstruction of navigation, *South Carolina* v. *Georgia*, 93 U. S. 4; the pollution of streams, *Missouri* v. *Illinois*, 180 U. S. 208; 200 U. S. 496; and the diversion of navigable waters, *Wisconsin* v. *Illinois*, 278 U. S. 367; 289 U. S. 395, 400. But in the case of such a controversy with a foreign power, a State has no prerogative of adjustment. No State can enter "into any Treaty, Alliance, or Confederation" or, without the consent of Congress, "into any Agreement or Compact with a foreign Power". Const. Art. I, sec. 10. The National Government, by virtue of its control of our foreign relations is entitled to employ the resources of diplomatic negotiations and to effect such an international settlement as may be found to be appropriate, through treaty, agreement of arbitration, or otherwise. It cannot be supposed that it was the intention that a controversy growing out of the action of a State, which involves a matter of national concern and which is said to affect injuriously the interests of a foreign State, or a dispute arising from conflicting claims of a State of the Union and a foreign State as to territorial boundaries, should be taken out of the sphere of international negotiations and adjustment through a resort by the foreign State to a suit under the provisions of Section 2 of Article III. In such a case, the State has immunity from suit without her consent and the National Government is protected by the provision prohibiting agreements between States and foreign powers in the absence of the consent of the Congress. While, in this instance, the proposed suit does not raise a question of national concern, the constitutional provision which is said to confer jurisdiction should be construed in the light of all its applications.

We conclude that the Principality of Monaco, with respect to the right to maintain the proposed suit, is in no better case than the donors of the bonds, and that the application for leave to sue must be denied.

Rule discharged and leave denied.